## LEGISLATION.

***The Nayar Regulation Amendment Bill.*—(Contd.)**

PRESIDENT: Do any of you wish to propose any further amendments to Clause 40? I see none. Then, we pass on to Clause 41.

***Clause 41.***

PRESIDENT: The first five amendments standing in the names of Messrs. A. Govinda Menon, V. Kunjukrishna Pillai, P. K. Narayana Pillai, C. Sankara Menon and S. Krishna Aiyar are identical. One gentleman will move the amendment and the rest will speak on it.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I move that the whole clause be deleted.

Clause 41 as amended by the Select Committee says that the manager of a tarwad would get half of his acquisitions in addition to his own share in the tarwad properties. I think this is one of the most unreasonable clauses that have ever crept into this Bill. In no system of law which recognises joint family is such a share allowed to the manager. Among the Hindus there is what is called *Jyeshtabhaga*. But it is only given at the time of partition and it is not recognised in law. A person may become a karanavan, as soon as he attains majority, and may begin the management of his tarwad. But during his managership or karanavanship those who actually work for the tarwad may be the anandaravans. In the case of most karanavans they generally take a lion's share of the profits of the properties of the tarwad and do what they please with that share. Of course, a suit can be filed in a civil court. But, in most of the respectable tarwads, a suit is not considered to be a decent or proper thing to be filed against the karanavan. Therefore, a suit generally comes in only after a series of insufferable troubles as regards tarwad management. There is also a further difficulty, namely, that it is absolutely impossible to distinguish between the accretion made by the manager after he assumed the managership and that made by those who predeceased him. In the case of immovable property, we may have some definiteness. But even as regards that, immovable property might have been bought by money invested not on registered deeds but simply on pro-notes. Suppose a karanavan dies leaving Rs. 20,000 on pro-notes. When the next karanavan come in, he invests that money on something else simply because he happens to realise that money and get it in his name. There are other difficulties which are of a similar nature. Under these circumstances, I propose that no additional share, more than what may fall to his individual share as a member of the tarwad, be given to the manager of a tarwad.

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): I second the amendment. In doing so I have to submit a few words. I protest against the passing of this Clause, because it will be a ruin to tarwad acquisitions made by the karanavan with the aid of tarwad funds.

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[Mr. P. K, Narayana Pillai.]

These acquisitions must go to the tarwad funds. There is no justification for allowing him half of the acquisitions. Hence I am for the deletion of this clause.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have also sent in an amendment in similar terms urging that this clause be deleted. As the provision in the Select Committee's report stands at present, any person in management of his or her tarwad, if he or she is able to make out that there has been an accretion to the assets of the tarwad after the management commences, will be entited to share the increment so brought about during the course of the management. In fact, it would open up all manner of difficulties if we are to allow this clause to stand. In the first place what exactly is meant by the term 'management by a person of the affairs of his tarwad' is not clear. There is first of all the management recognised by courts of law. The management of the tarwad is supposed to be run by the karanavan. But can it properly be said that the management of a tarwad is entirely conducted by the karanavan? It is difficult to say so. For, in all well-ordered tarwads the management is generally carried on with the active co-operation of the junior members. The karanavan generally issues orders. But so far as the management is concerned the junior members may be practically treated as the executive body that carries on the management. That is one difficulty. What exactly is meant by the management of the tarwad is not clear. Suppose the income of the tarwad is such as to leave a very decent margin for fresh acquisitions to be made for the tarwad. In that case what the karanavan does is to convert movable property, that is, the balance income in his hands, into immovable property as an additional acquisition. Therefore the special merit of the karanavan's work consists in his not wasting the income obtained from the tarwad properties. Now, that work is done by all conscientious karanavans only in the discharge of their legitimate duty, never expecting that they themselves would be entitled to a share of the income so saved and converted into acquisitions. The karanavan might have added to the movable property of the tarwad in various shapes, for example, a karanavan may make a few jewels for some of his nieces, or sisters, as the case may be. To take all these as acquisitions made on behalf of the tarwad and then to proceed to divide them would be a serious difficulty.

Further, we are not enacting an all-round law in this respect. For there are karanavans who have been the instruments of diminishing the properties of the tarwad to a considerable extent—nay to the extent of the vanishing point in some instances. In their case, is there a reciprocal obligation that they should make good to the tarwad what they have been wasting during their management? Then there would have been wide comprehensiveness with respect to the enactment in question. But no such thing is attempted in the present instance. The karanavans, as a general class, have had enough of management

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in our experience. So much so, the legislature is now interfering to extract the fangs of the karanavan and to enable the junior members to enforce their right to the extent of their share in the tarwad property.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know whether 'acquisition' includes 'conversion'?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes; that would certainly include conversion.

Then there are karanavans, and I would include in that category my humble self, who have acquired property by self-exertion. It is their own acquisition for the use of their own mothers and sisters. Can it be said to be an acquisition made by the karanavan during his management? They have willingly utilised their self-acquisitions in support of their mothers, sisters and brothers. It cannot be said that it is an acquisition made by virtue of the karanavan's management. So these various difficulties would come in. The question of ascertaining the particular amount of the increment that will have to be dealt with by a court of law would be another serious difficulty. We will have to embark upon an investigation, tracing the history of each acquisition, ascertaining meanwhile how far the income from the tarwad has contributed to form such increment, how far the personal qualifications of the karanavans have entered into such acquisitions, and how far the co-operation of the junior members has helped to bring about such acquisitions. All these things will have to be ascertained in a court of law, and then we have to proceed to settle that the karanavan would be entitled to half of the increment so brought about during the course of his management. That, I beg to submit, is an interminable enquiry, and an ordinary attempt in that direction would not be attended by anything like an accurate, final and satisfactory result. In view of these difficulties, in favour of a few karanavans—their number would certainly be not very large—to enact a measure of this description in the Nayar Regulation Amendment Bill seems not to be justified, as it appears to me. Our esteemed Deputy President, during the course of the deliberations on this measure at the Select Committee stage, struck, I should think, a very correct note when he observed—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is he in order in referring to the proceedings of the Select Committee?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am not referring to the proceedings, Sir. I am only quoting his personal view. I think it is extremely difficult to compensate the labours of love undertaken by a karanavan of the genuine type. And then to attempt to compensate him by a money payment seems to be, Sir, quite a mercenary procedure, and does not deserve any encouragement. If, as a matter of fact, a karanavan, out of pure love to his seshakaran, does things, he never contemplates and looks forward to any payment. In these circumstances, when there is no prayer from the quarter of karanavans, how this particular amendment



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[Mr. T. K. Velu Pillai.]

crept in is inexplicable. Then there is the stock argument occasionally resorted to by some people: "What is the meaning of your proceeding to divide the properties of the tarwad equally among all the members of the tarwad including children born the other day and the karanavan in whose mouth the teeth are already tottering?" My explanation is this. Law, unfortunately, is blind in its general sweep. We take the common broad facts and proceed to legislate. The machinery of law may press hard in certain quarters. Human wisdom is unable to cope with and provide for all out-of-the-way factors. Even if you are to legislate for each individual it will not be possible to provide for all possible contingencies. That is out of the question. Then, if, as a matter of fact, the karanavan and the two-year old child come in for equal treatment in a general division of the properties of the tarwad, is there not this consolation? The karanavan had been at the helm of affairs for years together, and, if he had liabilities, he had also rights to match them. Further, in the case of the karanavan, opportunities might not have been wanting to underrate the responsibilities and to overrate the rights. So far as the two-year old child is concerned it has been ushered into existence only recently; it has got many years yet to live and it had not the benefit of having anything substantial from the tarwad. So why not show more consideration to the children than to the karanavan who has had his fill and is prepared to withdraw himself from the world with the weight of years on him? This is what we should take into consideration in the case of the karanavan. Viewing the question in that light there is nothing like inequity perpetrated regarding the karanavan. In view of these facts I am submitting that the retention of this Clause is an instance of special pleading to which, I for one, cannot find my way to accede.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, the amendment has been moved by Mr. Govinda Menon, who, I am not sure, is not a karanavan. But it has been supported by one who is admittedly a karanavan himself. There are thus both energy and altruism in support of the amendment. The karanavan is an individual belonging to a class which is being condemned in these modern days. But the benefit of the doubt, at any rate, may be given to karanavans, who have after all been taking some interest in the management of the family, maintaining the members in some comfort and providing for some increase in the *corpus* of the tarwad properties. Because a few karanavans are bad, it does not mean that there is no karanavan who is good. Mr. Narayana Pillai said that it was a kind of special pleading in favour of the karanavan. If the Section as settled by the Select Committee related to karanavan A, B or C, of tarwad E, D or F, there would have been some justification for the amendment. But it is only a class that is designed to be affected by this Section and there may be some good persons among that class. Sir, in these days when anandaravans do not obey karanavans, when funds are not forthcoming even for necessary expenses when the rate of the tax the karanavan has to pay is increased at every settlement, when the re-

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difficulty to educate the nephews, and when, above all, public opinion is against the karanavan and every gust of wind brings into existence hobgoblins who dance on his ancient authority, the management of the tarwad becomes a most difficult task. Now, if we are prepared to be equitable and to take into consideration all the difficulties that have thus come in the way of the ordinary karanavan, then we would be wrong in refusing him a share of the property which he has acquired in spite of all these difficulties. That is a proposition to which I trust this House will not give any kind of qualified or unqualified adherence.

MR. JOSEPH PANJIKARAN (*Shertallai*) : Are there not karanavans who have practically destroyed families ?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Surely, there are. I am not for giving anything to them. The Section does not contemplate giving any portion of the tarwad property to them. On the other hand, let those karanavans be deposed. I would not care even if the karanavans are despised—although it is very easy now a days for karanavans to be despised without anybody's pleading. But when a particular amount has accrued to the benefit of a tarwad, as a result of his work there is nothing wrong in giving the karanavan a share in it. My learned friend pointed out that there is difficulty to find out the actual income and the actual share. That is a matter which we have to leave to the court. We should not sit in judgment over particular individuals or particular karanavans. We should not go through ledgers and files. The court will administer the law in each case. It has been argued that there is no reciprocity. It has been said that, if the karanavan should get the benefit of his savings, he must be prepared to reimburse or disgorge the entire amount he has made from the management of the tarwad. Now, Sir, marumakkathayam law has provided ample means of preventing such spoliation of tarwad funds. There are suits for removing karanavans from management and suits for maintenance which could be filed in courts, and in these suits, for acts of misfeasance or malfeasance of a bad karanavan, a court of law will be able to punish him.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : May I know whether these acts of misfeasance and malfeasance are taken into account only after they are committed by the karanavan ?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*) : It is only when there is the violation of the right that a court has got authority. The civil courts have no preventive jurisdiction in such a case. We are living in the world ; we should live here. There are several things over which we have no control. This is one of such things. After the junior members file suits the courts may have authority to enquire into the allegations.

There is one further argument. If this Section is not maintained in addition to all the provisions relating to partition, another difficulty will occur. If we retain this Section, the karanavan will have some interest in holding together the tarwad for some time more, and in order to do this, he will make an honest attempt to manage the tarwad better

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[Mr. T. K. Velu Pillai.]

This law enables the junior members to ask for partition. Therefore the karanavan will try to manage better, lest the junior members should claim partition. Thus we see that this provision will prevent disintegration of the tarwad. The retention of this Clause will also tempt the karanavan to manage the tarwad more efficiently because this provides for half of the acquisition being given to the karanavan in addition to his own share. It is in view of all these circumstances that this clause has been drawn up after so much discussion in the Select Committee.

The argument of labour of love has been indented upon for the purpose of supporting the amendment and the authority of Mr. Krishna Aiyangar was quoted. Sir, if we all believe in labour of love, there is absolutely no necessity for legislation. If you want the law to regulate all matters, certainly it will also act rather rigorously in certain quarters. That is inevitable. Here is a provision which will serve the best interests of the tarwad because it will be to the advantage of the tarwad if the karanavan succeeds in making any saving out of the income from the tarwad and he would naturally be tempted to do so because this Section provides for the karanavan being given one-half of such acquisition in addition to his own share when the whole property of the tarwad is thrown into the hotchpot for a division to be effected at the time when partition is claimed. This will therefore give an inducement to the karanavan to manage the tarwad property better and more efficiently.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I ask Mr. Velu Pillai whether, if a junior member is prepared to bring about a greater increase in the tarwad property than the karanavan himself, the karanavan would be willing to hand over the management to such junior member?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, I must again appeal to the normal conditions of affairs in this world. Certain people are born in certain positions and they have rights incidental to such positions. There may be others who may be able to work much better in the same position, but we have no right to turn out the man entitled to it. There is no use in saying that, if another man is put into the womb of his mother, she would have given birth to a person who would be able to discharge the duties better. That is clearly impossible. A right of birth is a right of birth and the karanavanship naturally goes to the senior male member. When this is the case, simply because a man offers to do the work better and more efficiently, that is not a proposal which can be seriously put forward. If the District Magistrate who is drawing a salary of Rs. 800 or more is not able to discharge his duties to the complete satisfaction of all and if another gentleman comes and says: 'Give me Rs. 300 and make me a District Magistrate; I undertake to discharge the duties much better,' that is not a proposal which could be seriously entertained for a

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moment. Therefore the existence in a tarwad of a large number of junior members who are able and willing to manage the tarwad affairs better could never be taken to be a ground for sending away the senior male member of the tarwad who has the birthright to be the karanavan. Therefore I am for the retention of this Clause.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I ask Mr. Velu Pillai whether this concession should be shown even to a karanavan who, though he might have acquired some property, may have also destroyed some tarwad property?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If, in the end, the management of the karanavan proves to be disadvantageous to the tarwad we are not giving anything to him.

MR. JOSEPH PANJIKARAN (*Shertallai*): Does the Section provide for that?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes; the whole matter will have to be gone into. But that is for the courts.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): In moving for the deletion of this Section, I wanted merely to place some practical difficulties that suggested themselves to me. The word 'acquisition' may mean active acquisition or, as I would put it, passive acquisition also; or again, in other words, there is such a thing as the automatic increase of the wealth of the tarwad. To give an example, suppose a prior karanavan had lent some money on hypothecation bonds and in the days of the succeeding karanavan the hypothecated properties are sold in court auction and purchased in the name of the succeeding karanavan. The succeeeding karanavan has not done anything whatever for such an increase of the tarwad property, except for the fact that he happened to be placed on record as the representative of the prior karanavan. In such a case, it may be said that the succeeding karanavan acquired such property. Let us take again another instance. Supposing the wealth of a tarwad consists in cattle and the cattle in the usual course increase in number, for which increase the karanavan is not in any way responsible, he cannot be said to have acquired such an increase to the wealth of the tarwad.

PRESIDENT: Unless he takes preventive measures against epidemics the cattle may disappear.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Yes; the cattle may disappear or be killed or sold away.

Suppose again, that the tarwad has property adjoining a river or a lake and the Government authorities force the karanavan to have the registry of the land adjoining his holding. That would also be a case of automatic increase of the wealth of the tarwad.

PRESIDENT: I do not think Government ever force them.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): In these circumstances, can we say that the property is acquired by the karanavan?

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[Mr. G. Paramesvaran Pillai.]

Then, coming to the question of management, there also the difficulty may arise whether managment connotes active management only or passive management, *i. e.*, continuance of *status quo* or policy of drift. That also may have to be considered. After all, as Mr. P. K. Narayana Pillai put it, no karanavan is expected to be rewarded for the proper discharge of his duties. Why not leave virtue as its own reward?

MR. G. PRAMESVARAN PILLAI (*Neyyttinkara*): I beg to support the amendment of Mr. Govida Menon to delete this clause. This clause appears to me to be absolutely vague and unjust. It will, I am sure, lead to endless litigation. The clause reads thus :—

"If a person was in management of his or her tarwad, on half of the acquisitions if any, made by such person during such management with the aid of tarwad funds, shall on partition, be allotted to him in addition to the share which he would otherwise be entitled to get."

In the first place, the term 'management' is very vague as already observed by my friends Messrs. P. K. Narayana Pillai and Krishna Aiyar. There is also another difficulty in determining the nature of the acquisition itself. We find here the term 'acquisition' used. The word 'acquisition' here might mean what he had purchased after he became karanavan. The karanavan might have alienated several properties after he became manager of the tarwad and he might also have acquired some property after he became the karanavan. Therefore there may be acquisitions as well as alienations. We should like to know whether this Section contemplates any settlement of accounts and striking of balance when the karanavan is sent away and partition is claimed, and whether the balance is to be taken to be the real basis for division.

PRESIDENT: That is what the Section means.

MR. G. PARAMESVARAN PILLAI (*Neyyattinakra*): Probably that is what is intended.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Is Mr. Paramesvaran Pillai agreeable to some verbal alteration in the Section?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Verbal alterations are absolutely necessary if even the intention of the Select Committee is to be made clear, because the Section, as it is, is absolutely defective. It requires substantial alteration even to give effect to the intention of the Select Committee.

Then again, the expression 'tarwad funds' is also very vague according to me. It appears to me, Sir, that it would mean even the belongings of the tarwad. For the succeeding karanavan might have executed a release of mortgage acquisitions in favour of the tarwad by the prior karanavan and with the money so obtained might acquire other property. Such acquisition is certainly not

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intended to be treated as property in respect of which the karanavan should get any share. He has only converted the tarwad fund into landed property. This is a measure which appears to have no parallel elsewhere and it is our duty to see that the terms used are beyond all doubt. As it is, even acquisitions made with the aid of tarwad funds may be construed to be acquisitions under this Section.

PRESIDENT: It may mean that.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I think it will include even conversion of one sort of property into another. I do not think that that was the intention even of those members of the Select Committee who were for the retention of this clause, because such acquisition is a matter of necessity. The mortgagor has to be given back the property as soon as he is ready to pay the money. It is such money that is being invested in landed property by the karanavan of the tarwad. The money itself certainly belongs to the tarwad. Therefore, I do not think even those gentlemen who are for the retention of this clause would have intended this, because when the acquisition has been made only out of the tarwad funds, it would be really strange if the karanavan is to be given a half of such acquisition for which he was not at all responsible and which was solely out of the tarwad funds. Usually, as manager of the tarwad, the karanavan is in charge of all the available funds of the tarwad, the whole of his family is being maintained by tarwad funds and he himself might have accumulated some wealth taking advantage of his position as karanavan. If, in addition to all these he is to be given one-half of the acquisitions made from tarwad funds also, certainly the tarwad will be impoverished in no time. That, I should consider, is an absolutely dangerous game.

Further, there is another circumstance also. My friend Mr. Velu Pillai rightly stated that there is some intimate relationship between the karanavan's mentality and the povision that we have already passed regarding partition. If the junior members of a tarwad want partition of tarwad property, they have necessarily to approach the karanavan and he will at once say that acquisitions made by him with the aid of the tarwad funds are his own acquisitions and that he must have a half of such property. In such cases, if a partition is to be effected without recourse to a court of law, certainly the junior members will have to agree to the terms of the karanavan. If, as Mr. Velu Pillai says, we leave it to the court to decide whether the karanavan has made any acquisition at all, and if so, how much, evidently then, partition cannot take place unless a court of law is moved in the matter. In that case, the karanavan will necessarily raise all sorts of objections taking advantage of the vagueness of this Section and the consequent difficulty in the determination of the extent of the acquisition. All sorts of difficulties will arise. The actual extent of tarwad property at the time the particular individual became karanavan will have to be determined. Practically, a settlement of accounts will have to be made at the time partition is proposed to be effected. I submit that this position would lead to the necessity of moving a court of law in all cases of partition. If, in each and every case, the process of settlement of accounts between

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[Mr. T. Kumara Pillai.]

the karanavan and the junior members has to be repeated and that in a court of law, that would certainly be a real hardship to the members of the tarwad who want partition. It will take a number of years for each partition suit to be disposed of. Partition suits, Sir, should generally be disposed of in as speedy a manner as possible. Under the existing circumstances, we see that, on the other hand, it will take an inordinately long time to dispose of them.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Parameswaran Pillai if he is not aware of instances of partition effected by amicable settlement, in which the karanavan has been a given larger share than the other individuals?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes; because that is the only course open to the junior members at present if they want partition. They have necessarily to get the sanction of the manager. To get this sanction, they are forced by the karanavan to make ample provision not only for the karanavan, but for his wife and children also, out of the tarwad property. I have come across several settlement deeds, *nischayapatrams*, where such provision had to be made not only for the karanavan, but for his wife and children also. But under this Bill, we are giving the junior members the privilege of claiming partition without the sanction of the karanavan. I should think that if this clause is allowed to stand in the Bill, it would be taking away the privilege that has been conferred on the junior members, because they would be forced to resort to courts of law in all cases. I therefore support the amendment for the deletion of this clause. It will be absolutely destructive of the interests of the tarwad itself.

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): മിസ്റ്റർ എ. ജി. മേനോന്റെ ഭേഗതിയെ ഞാൻ എതിക്കുന്നു. തറവാട്ടുകാരണവന്റെ നിലയിൽ തറവാട്ടിലേക്കു കൂട്ടുതലായി സമ്പാദിച്ചിട്ടുള്ള സ്വത്തിൽ ഒന്നംപകുതി അയാളുടെ സ്വന്തസമ്പാദ്യമായി ഗണിച്ചു കൊടുക്കേണ്ടതാണെന്നുള്ള ര ഫ-ാമത്തെ വകുപ്പിനെ എന്റെ മാന്യസ്നേഹിതന്മാരിൽ ചിലർ എതിക്കുന്നു. അവർ ചൂണ്ടിക്കാണിച്ചുപറയുന്ന മാതിരിയുള്ള കാരണവന്മാർക്കു സമ്പാദിക്കുന്നതിനോ തറവാട്ടുമുതൽ വർദ്ധിപ്പിക്കുന്നതിനോ സാധിക്കുന്നതല്ല. അങ്ങനെയുള്ള കാരണവന്മാർക്കു കൂട്ടുതൽ സ്വത്തു കൊടുക്കണമെന്ന് ആ വകുപ്പിൽ ഉദ്ദേശിച്ചിട്ടില്ല.

തറവാട്ടിൽ സമ്പാദിച്ചിട്ടുള്ള കാരണവന്മാർക്ക് അവർക്കുള്ള ഒരു പങ്കല്ലാതെ കൂട്ടുതലായി ഒന്നുംതന്നെ കൊടുക്കാൻ പാടില്ലെന്നുള്ളതിന് എന്റെ മാന്യസ്നേഹിതന്മാർ പലേ കാരണങ്ങളും പറയുന്നു. അതിലേക്കുപറയുന്ന ഒന്നാമത്തെ കാരണം അനന്തരവരുടെ സഹായത്തോടുകൂടി

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കാരണവന്മാർ സമ്പാദിച്ചിട്ടുണ്ടെന്നാണ്. ഈ സംഗതി ഈ ർ ജ്യത്തു പലേ ഭാഗങ്ങൾക്കും സംബന്ധിക്കുന്നതല്ല.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*). അനന്തരവർ അവരുടെ അച്ഛന്റെ കൂടെയാണെല്ലോ താമസിക്കുന്നതു്. ആ കാല ത്തു് അവരുടെ ചിലവുകൾ അച്ഛനാണു് വഹിക്കുന്നതു്. തന്നി മിത്തം കുടുംബത്തിൽ അനന്തരവക്കു ചിലവാക്കേണ്ടതായ തുക തറവാട്ടിനു ആദായമായിതീരുന്നു. അതിലും ഓഹരി കാരണവക്കു കൊടുക്ക ണമെന്നു പറയുന്നതു ന്യായമാണോ?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): ധാരാളം കുടുംബങ്ങളിൽ അനന്തരവരുടെ പഠിത്തച്ചിലവിനും അനന്തരവ ത്തികളുടെ വിവാഹച്ചിലവിനും കാരണവന്മാർ പണം ചിലവാക്കി വരുന്നുണ്ടു.

ഈ വാദത്തെ സംബന്ധിച്ചു് ഒരു പ്രത്യേകസംഗതി കൂടി ഇവി ടെ ചൂണ്ടിക്കാണിച്ചു പറയേണ്ടതായിരിക്കുന്നു. അതായതു സ്ത്രീകളെ വിവാഹംചെയ്തുകൊടുത്തു് അന്യഗൃഹങ്ങളിൽ അയയ്ക്കുകയും അതുപോലെ തന്നെ വിവാഹം ചെയ്യുന്ന സ്ത്രീകളെ ഭർതൃഗൃഹങ്ങളിൽ കൊണ്ടുവരിക യും ചെയ്യുന്ന ഏർപ്പാടു നടന്നുവരുന്നതായ എല്ലാസ്ഥലങ്ങളിലും ഈ വാ ദത്തിനു ശക്തിയുണ്ടായിരിക്കുന്നതല്ല. ഈ ദിക്കുകളിൽ മിക്കവാറും അവസരങ്ങളിൽ ശ്രേഷ്ഠക്കാർ അവരുടെ അച്ഛന്റെ വീട്ടിലായിരിക്കു മ്പോൾ സമ്പാദ്യത്തിൽ കാരണവന്മാരെ സഹായിക്കാൻ സാധിക്കുന്നത ല്ല. നേരേമറിച്ചു തറവാട്ടുവസ്തുക്കളെ വർദ്ധിപ്പിക്കാനായി കാരണവ ന്മാരെ പ്രധാനമായി സഹായിച്ചുവരുന്നതു് അവരുടെതു് മക്കളാണു്.

രണ്ടാമത്തെ കാരണം കാരണവന്മാർ തറവാട്ടിലെ മാനേജരന്മാ രേയാകുന്നുള്ളു എന്നും അതിനാൽ അവർ തറവാട്ടിലേക്കു കൂട്ടുതലായി സമ്പാദിച്ചിട്ടുണ്ടെങ്കിൽ അതു് അവരുടെ ചുമതലയാണെന്നും അതിനാൽ വക്കു പ്രത്യേകപ്രതിഫലം കൊടുക്കേണ്ട ആവശ്യമില്ലെന്നും ആണു്. ഒരു കാരണവൻ മിതമായി ചിലവുകഴിച്ചു നീക്കിക്കിട്ടുന്ന ആദായത്തെ തറ വാട്ടിൽതന്നെ സമ്പാദിക്കണമെന്നു നിർബന്ധിക്കുന്നതായ നിയമമില്ല. അങ്ങനെ നിർബന്ധിക്കാൻ നിവൃത്തിയുമില്ല. നേരേമറിച്ചു തറവാ ട്ടിൽനിന്നും കിട്ടുന്ന ആദായത്തെ യഥേഷ്ടം ചിലവാക്കാൻ കാരണവക്കു് അധികാരമുണ്ടു്. ഈ സ്ഥിതിയിൽ തറവാട്ടിനെ നശിപ്പിക്കയും അവ ക പണത്തെ ഭാര്യയ്ക്കും മക്കൾക്കും സമ്പാദിക്കയും ചെയ്തിട്ടുള്ള കാരണവ ന്മാർ സമർത്ഥന്മാരായും, സ്വാർത്ഥതൽപരതകൂടാതെ തറവാട്ടിലേക്കുവേണ്ടി



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[Mr. T. Kumara Pillai.]

പലേ ശ്രമങ്ങളും ചെയ്തു തറവാട്ടിലേക്കു സമ്പാദിച്ചിട്ടുള്ള കാരണവന്മാർ ഈ നിയമത്താൽ അബദ്ധന്മാരായുമാണ് തീരുന്നത്.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): മിസ്റ്റർ പി. കെ. നാരായണപിള്ള പറഞ്ഞതുപോലെ ചില കാരണവന്മാർ സ്വന്തം സമ്പാദ്യത്തിനെ തറവാട്ടിൽ അവരുടെ സഹോദരികൾക്കും അനന്തരവക്കുമായി കൊടുത്തിട്ടുണ്ടല്ലോ; അവർ അതിനെ തിരിച്ചു ചോദിക്കുമോ?

MR. T. KUMARA PILLAI (*Eraniel cum Vilavankod*): മിസ്റ്റർ പി. കെ. നാരായണപിള്ള പറഞ്ഞതുപോലെ അവർ മനസ്സോടുകൂടി കുടുംബത്തിലേക്കു കൊടുത്തതു തിരിയെ വേണമെന്ന് ആവശ്യപ്പെടുമെന്നു തോന്നുന്നില്ല. ആവശ്യപ്പെട്ടാലും കൊടുക്കുന്നതല്ല.

മൂന്നാമത്തെകാരണം കാരണവന്മാർ തറവാടുകളിൽനിന്നും കിട്ടുന്ന ആദായങ്ങളെ യഥേഷ്ടം സ്വന്തകാര്യങ്ങൾക്ക് ഉപയോഗിച്ചു സുഖമെടുത്തിട്ടുള്ളവരാണെന്നും അതിനാൽ അവർക്കു കൂടുതൽ കൊടുക്കേണ്ട ആവശ്യമില്ലെന്നുമാണ്. തറവാട്ടിനേയും തറവാട്ട് അംഗങ്ങളേയും ശരിയായി പരിപാലിച്ചു കുടുംബഭരണം നടത്തുന്നതിന് ഇന്നത്തെസ്ഥിതിക്കു ഒരു കാരണവനു പലേ വിഷമങ്ങളും ഉള്ളതാണ്. ഇങ്ങനെയുള്ള കാരണവന്മാരുടെ ഭരണത്തിൽനിന്നും കിട്ടുന്ന ആദായത്തെ മിതമായി ചിലവാക്കി പലേ ശ്രമങ്ങളും കഴിച്ചെങ്കിൽ മാത്രമേ സമ്പാദിക്കാൻ സാധിക്കയുള്ളൂ. ഈ സ്ഥിതികളെപ്പറ്റി ആലോചിക്കാതെ എല്ലാകാരണവന്മാരും ഒരുപോലെ ദോഷികളാണെന്നുള്ള സങ്കല്പത്തോടുകൂടി എന്റെ സ്നേഹിതന്മാരിൽ ചിലർ വാദിക്കുന്നു. ഇതു വലുതായ തെറ്റിദ്ധാരണയാണെന്നു പറയാതെ തരമില്ല. ഈ കാലത്തുതന്നെയും യോഗ്യന്മാരായ കാരണവന്മാർ ഉണ്ടെന്നുള്ളതു ഒരിക്കലും മറച്ചുവയ്ക്കാവുന്നതല്ല. നശിപ്പിക്കുന്ന കാരണവന്മാരേയും, കുടുംബത്തെയും കുടുംബാംഗങ്ങളെയും വഞ്ചിച്ചു സ്വാർത്ഥമായി വേണ്ട മുതൽകരുതുന്ന കാരണവന്മാരേയും, കുടുംബത്തിന്റെ സ്വത്തു വർദ്ധിപ്പിക്കണമെന്നുള്ള നിഷ്കളങ്കമായ കരുതലോടുകൂടി മിതമായി ചിലവുകഴിച്ചു പലേ സങ്കടങ്ങളും അനുഭവിച്ചു കുടുംബത്തിലേക്കു സ്വത്തുണ്ടാക്കീട്ടുള്ള കാരണവന്മാരേയും ഒരുപോലെ കരുതുന്നതു കഷ്ടമായിട്ടുള്ളതാണ്. ഇന്നത്തെ നിയമത്താൽ വന്നുകൂടുന്നതു ധാരാളം വരവുള്ള ഒരു കുടുംബത്തിൽ അതിലെ കാരണവർ ചിലവുകളെ ക്രമീകരിച്ചു വച്ചുകൊണ്ടിരി

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ക്കാത്തതിനാൽ വലുതായ കടം വരുത്തുന്നു. അയാൾക്കു കുടുംബം വീതിക്കുമ്പോൾ ഒരു പങ്കു കിട്ടുന്നു സമ്പാദിക്കാൻ സൌകര്യമുള്ളതായ മറെറാരു കുടുംബത്തിലെ കാരണവർ സമ്പാദിക്കാതെ വരവുകളെ മുഴുവൻ ചിലവാക്കിക്കൊണ്ടിരിക്കുന്നു. അയാൾക്കും ഒരു പങ്കു കിട്ടുന്നു. പതിനായിരം രൂപാ കടമുണ്ടായിരുന്ന വേറൊരു കുടുംബത്തിലെ കാരണവർ മിതമായി ചിലവുകൾ നടത്തി കടം തീർത്തു പതിനായിരം രൂപായുണ്ടാക്കുന്നു. അയാൾക്കും ഒരു പങ്കു തന്നെയാണ് കിട്ടുന്നതു്. അതായതു ഭാഗപത്രം രജിസ്ടരാക്കുന്ന ദിവസം പ്രസവിക്കുന്ന കുഞ്ഞിനും മേൽ വിവരിച്ച കാരണവന്മാർക്കും ഒരുപോലെ ഒരു പങ്കാണ് കിട്ടുന്നത്. ഇതിന്റെ ഔചിത്യം എന്താണെന്നറിയുന്നില്ല.

അതുപോലെതന്നെ ഒരു തറവാട്ടിൽനിന്നും അതിലെ അംഗങ്ങൾ പലേ സങ്കടങ്ങൾ അനുഭവിച്ചും സ്വത്തുക്കളെ നശിപ്പിച്ചും അതിലുള്ള ഒരാളെ ഉൽകൃഷ്ടപരീക്ഷാവിഷയിയാക്കിയതിൽപിന്നീടു് അയാൾ സമ്പാദിക്കുന്ന മുഴുവൻ സ്വത്തുക്കളും ഭാര്യയും മക്കൾക്കും കൊടുക്കുന്നു. ആ ആൾക്കും തറവാട്ടു വീതിക്കുമ്പോൾ ഒരു പങ്കു കിട്ടുന്നു. തറവാട്ടഭരണത്തിൽ പലേ സങ്കടങ്ങളും അനുഭവിച്ചു സ്വത്തുണ്ടാക്കീട്ടുള്ള കാരണവന്മാർക്കു അതിന്റെ ഒരു ഓഹരി കൊടുക്കാൻ പാടില്ലെന്നു ശക്തിയോടുകൂടി വാദിക്കുന്ന എന്റെ മാന്യസ്നേഹിതന്മാരിൽ ആരുംതന്നെ ഈ സംഗതിയെപ്പററി ആക്ഷേപിച്ചിട്ടില്ല. നിയമകർത്താക്കന്മാർക്ക് ഈ മനഃസ്ഥിതിയുണ്ടായിരിക്കാൻ പാടില്ലാത്തതാണ്. പബ്ലിക്കു സർവ്വീസിൽ വലുതായ വീഴ്ചകൾ ചെയ്യുന്ന ഉദ്യോഗസ്ഥന്മാർക്കുപോലും അവരെ പിരിച്ചയക്കുമ്പോൾ അവരുടെ മുൻ സർവ്വീസുകളെ ആലോചിച്ചു് ഗവർൺമെൻറിൽനിന്നും Compassionate allowance കൊടുത്തുവരുന്നു. എന്നാൽ കാരണവന്മാരുടെ സംഗതിയിൽ അവർ എത്രതന്നെ സങ്കടങ്ങൾ അനുഭവിച്ചു കുടുംബത്തിനു എത്രതന്നെ സമ്പാദിച്ചിരുന്നാലും അവരെ മററംഗങ്ങളെപ്പോലെ ഗണിക്കുകയല്ലാതെ അവരോടു യാതൊരു സൌജന്യങ്ങളും കാണിക്കേണ്ട ആവശ്യമില്ലെന്നു നിയമമുണ്ടാക്കുന്നതു് ഒരിക്കലും ന്യായമായിരിക്കയില്ല.

മറെറാരു സംഗതിക്കുടി എനിക്കു കൌൺസിലിന്റെ ശ്രദ്ധയിൽ കൊണ്ടുവരേണ്ടതായുണ്ടു്. ഭാര്യയും കുട്ടികൾക്കും സ്വത്തുക്കൾ കൊടുക്കേണ്ട ആവശ്യമില്ലെന്നും അവർ തങ്ങളോടുകൂടി താമസിക്കുന്ന കാലത്തോളം ചിലവു കഴിച്ചുപോരുന്നതുകൊണ്ടുതന്നെ അവർക്കു ധാരാളം മതിയാകുമെന്നും അഭിപ്രായമുള്ളവരും വലിയ സമ്പാദ്യക്കാരുമായ കാരണവന്മാരെ ഞാൻ കണ്ടിട്ടുണ്ടു്. അതുപോലെതന്നെ തറവാട്ടിലേക്കു വേണ്ടപോലെ

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[Mr. P. K. Narayana Pillai.]

സമ്പാദിച്ചുകൊണ്ടിരിക്കയും അതിന്റെ ആദായംകൊണ്ടു ഭാര്യയ്ക്കും മക്കൾക്കും പിന്നീടു സമ്പാദിച്ചുകൊടുത്തുകൊള്ളാമെന്നു കരുതി ഭരണം നടത്തിപ്പോരുന്ന കാരണവന്മാരേയും ഞാൻ കണ്ടിട്ടുണ്ട്. ഇന്നത്തെ ബിൽ നിയമമായി പുറത്തുവരുമ്പോൾ ഒരു ദിവസം കാലത്ത് ഇങ്ങനെയുള്ള കാരണവന്മാർക്കും അന്നേദിവസം പ്രസവിച്ചിട്ടുള്ള കുഞ്ഞുങ്ങൾക്കും ഒരുപോലെയുള്ള ഓരോ പങ്കു മാത്രമേ നിയമത്താലുള്ളൂ എന്നുള്ളതിനാൽ അതു വാങ്ങി തറവാടുവിട്ടു പുറത്തുപോകണമെന്ന് അവരോടു ആവശ്യപ്പെടാൻ ഇടയാകുന്നതു വലുതായ ഒരു വിശ്വാസവഞ്ചനയായി തീരുമെന്നു പറയാൻ എനിക്കു മടി തോന്നുന്നില്ല.

MR. JOHN NIDIRY (*Changanachery* cum *Minachil*): തറവാട്ടു സ്വത്തിന്റെ ഒന്നുപകുതി കൊടുക്കുന്നതു കുറേ ക്രൂരമായിപ്പോയില്ലേ?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): അവർക്ക് ഒന്നുപകുതി കൊടുക്കണമെന്നു പറയുന്നില്ല. കുറെ ക്രൂരതൽ കൊടുക്കണമെന്നേ ഞാൻ പറയുന്നുള്ളൂ. തറവാട്ടിലേക്കു സമ്പാദിച്ചിട്ടുള്ള കാരണവന്മാർ അവരുടെ കടമയെ നിർവഹിച്ചു എന്നല്ലാതെ അതിലേക്കു പ്രതിഫലം വേണമെന്നു ചോദിക്കുന്നതും കൊടുക്കുന്നതും ന്യായമല്ലെന്നാണ് മറെറാരു വാദം പറയുന്നതു. കാരണവന്മാർ സമ്പാദിച്ചിട്ടുള്ളതിനു പ്രതിഫലം ചോദിക്കയോ കൊടുക്കയോ ചെയ്യുന്നതായിട്ടല്ല അതിനെ ഗണിക്കേണ്ടതു്. കാരണവന്മാർക്കു ദേഹശക്തിയുള്ള ചെറുപ്പകാലങ്ങളിൽ അവർ തറവാട്ടിന്റെ അഭിവൃദ്ധിക്കു വേണ്ടി പ്രയത്നങ്ങൾ ചെയ്യുന്നു. അവർക്കു പ്രായമാകയും ശക്തികുറയുകയും ചെയ്യുന്ന കാലത്ത് ആ കുടുംബത്തിലുള്ള ഒരുകൂട്ടർക്കു കിട്ടുന്നതായ ഒരുപങ്കു കൊടുത്തു പിരിച്ചയയ്ക്കുന്നതായാൽ അവരുടെ സ്ഥിതി എന്തായി തീരുമെന്നുള്ളതാണ് ആലോചിക്കേണ്ടതു്. അങ്ങനെയുള്ളവർക്കു അവരുടെ പരിശ്രമങ്ങളുടെ തോതനുസരിച്ചു അതിന്റെ ഒരു ഓഹരി കൊടുക്കണമെന്നു പറയുന്നതു ന്യായമായിട്ടുള്ളതാണ്.

ഈ കാരണങ്ങളാൽ മിസ്റ്റർ എ. ജി. മേനവന്റെ ഭേദഗതിയെ ഞാൻ എതിർക്കുന്നു.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): ഒരു ചോദ്യം ചോദിച്ചു കൊള്ളട്ടെ. ഒരു കുടുംബത്തിലെ മുതൽ, ഒരു കാരണവന്റെ അപേക്ഷയും കൊണ്ടല്ലാതെ തട്ടിക്കാൻ പാടില്ലാത്ത മറു സംഗതി

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കളാൽ മുഴുവനും നശിച്ചു പോകുമെന്ന പതനത്തിൽ വേറെ ഒരു കാരണവൻ തന്റെ സാമർത്ഥ്യം കൊണ്ടു കുടുംബസ്വത്തിൽ പകുതി തിരിച്ചെടുത്താൽ ആ കാരണവനു അയാളാൽ വീണ്ടെടുക്കപ്പെട്ട വസ്തുക്കളുടെ പകുതി കൊടുക്കേണ്ടതു?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): ദിഷ്ടാന്തസഹിതം പറയണം.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): ഒരു ഡിക്രി പ്രകാരം കുടുംബസ്വത്തു മുഴുവനും ലേലത്തിൽ പോകുന്നു. അപ്പോൾ തറവാട്ടിലെ ഒരു കാരണവൻ ആ ഡിക്രിയുടമസ്ഥനോടു കുറഞ്ഞ യാചിച്ചു പകുതിസ്വത്തു അയാളുടെ വിധിക്കടത്തിനായി വകവച്ചു ശേഷം പകുതിസ്വത്തു കുടുംബത്തിലേക്കു മേടിക്കുന്നു. അയാൾ അപ്രകാരം ചെയ്യാത്തപക്ഷം കുടുംബസ്വത്തു മുഴുവനും നശിച്ചുപോകുമായിരുന്നു. അങ്ങനെ അയാൾ മേടിയ്ക്കുന്ന സ്വത്തു കുടുംബത്തിലേക്കാളായതുകൊണ്ടു ആ സ്വത്തിൽ പകുതി ആ കാരണവനു കൊടുക്കേണ്ടതല്ലേ? ഇപ്പോഴത്തെ നിയമപ്രകാരം ഇതു പോലെ സമ്പാദിക്കുന്ന കാരണവനു കിട്ടുന്നില്ലല്ലോ.

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): കുടുംബഭരണം നടത്തിക്കൊണ്ടു പോകേണ്ടതു കാരണവരുടെ കടമയാണു. ആ കടമയിൽ ഉൾപ്പെട്ടതാണു് ഇതു്.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): തറവാട്ടാളായം അനാവശ്യച്ചിലവു കൂടാതെ സൂക്ഷിക്കേണ്ടതു കാരണവന്റെ കടമയല്ലേ?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): തറവാട്ടിലെ സ്വത്തു കൂട്ടാതെ കഴിക്കാൻ കാരണവനു സാധിക്കാവുന്നതാണു്. ഞാൻ പറഞ്ഞതു സ്വത്തു കുറയാതെയിരിക്കാൻ നോക്കേണ്ടതു കാരണവന്റെ ചുമതലയാണെന്നാണു്. ആചുമതലവഹിച്ചു കഴിഞ്ഞാൽ പിന്നെ പ്രത്യേകം പങ്കു കൊടുക്കേണ്ട ആവശ്യമില്ല.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): ഒരു കാരണവന്റെ ഭരണത്തിൽ അയാളുടെ യാതൊരു ശ്രമവും കൂടാതെ—മുമ്പുള്ള കാരണവന്മാരുടെ ശ്രമംകൊണ്ടു—തറവാട്ടുസ്വത്തു കൂടുന്നതായാൽ ആ കാരണവക്കു് അതിൽ പകുതി കൊടുക്കേണ്ട ആവശ്യമുണ്ടോ?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): ദിഷ്ടാന്തസഹിതം പറയണം.

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[Mr. G. Parameswaran Pillai.]

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): മുമ്പിരുന്ന കാരണവൻ പത്തുരണ്ടായിരം തൈവച്ചിരുന്നു. അതിനുശേഷമുള്ള ഒരു കാരണവന്റെ കാലത്താണ് അതു കായ്ഫലമാകുന്നത്. അങ്ങനേയുള്ള ആദായത്തിൽ പങ്കുതി അപ്പോഴത്തെ കാരണവനു കൊടുക്കണമോ?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): കാരണവൻ ചുമ്മാതിരുന്നാൽ ഈ തെങ്ങുകൾ കായ്ഫലത്തിൽ വരികയില്ല. മിസ്റ്റർ കൃഷ്ണയ്യരുടെ പ്രസംഗത്തിൽ കന്നുകാലികളുടെ വർദ്ധനയ്ക്കു കാരണവരുടെ ശ്രമം ഇല്ലല്ലോ, പിന്നെ അവക്ക് അതിൽ പങ്കു കൊടുക്കുന്നതെന്തിന്, എന്നുപറഞ്ഞപ്പോൾ, കാരണവൻ Epidemics കൊണ്ടു കന്നുകാലികളെ നശിച്ചുപോകാതെ സൂക്ഷിച്ചുവന്നതുകൊണ്ടാണ് അതുകന്നുകാലികളെ വർദ്ധിച്ചുവന്നതെന്നു പ്രസിഡൻറു പറയുകയുണ്ടായി. ആ സമാധാനം തന്നെ ഇവിടെയും പറയേണ്ടിയിരിക്കുന്നു.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): ഇങ്ങനെ കന്നുകാലികളും മറ്റു തറവാട്ടുസ്വത്തുക്കളും നശിച്ചുപോകാതെ സൂക്ഷിക്കേണ്ടതു കാരണവരുടെ ചുമതലയല്ലെ?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): ഒരു ജഡ്ജി വളരെ സാക്ഷിമൊഴിയും റിക്കാർഡുകളും ഉള്ള ഒരു കേസിൽ ഒന്നാംതരത്തിൽ ഹൈക്കോടതി സ്റ്റീഫിക്കേറു ലഭിക്കത്തക്കവിധത്തിൽ ജഡ്ജ്മെന്റെഴുതിയാൽ ആ ജഡ്ജിക്ക് ആ മാസത്തിൽ ശമ്പളം കൂടുതൽ കൊടുക്കാറുണ്ടോ?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): ഇല്ല.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): ഹിന്ദുലാപ്രകാരം അച്ഛനും മകനും സ്വത്തിന് ഒരുപോലെ അവകാശമുണ്ടെന്നറിയാമോ?

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): അറിയാം.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I rise to oppose the amendment. The karanavan of a marumakkathayam tarwad is a very much maligned person and it is not an easy task to defend him.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know why he has been a maligned person?

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The reasons are too numerous to mention, but the chief reason is that he is a single individual while the anandaravars are numerous. Nevertheless, I have in other places defended the karanavan, and that successfully. Therefore, I hope that I may be able to defend him once again in this House with some success.

The provision that is now introduced in the Nayar Regulation Amendment Bill is not an entirely new provision. We find it in the Ezhava Regulation which was adopted by this Council only a few months back. That provision is to this effect:

"On the death of an Ezhava female domiciled in Travancore, leaving her surviving neither members of her thavazhee.....

*Explanation 1.* If the deceased person was in management of his or her tarwad or of undivided makkathayam property, one-half of the acquisitions, if any, made by such person during such management with the aid of the income from such tarwad or makkathayam property, as the case may be, shall be treated as the person's self-acquisition for the purpose of this part in addition to other self-acquisition."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether the system of inheritance among a section of Ezhavas is not different from the system of inheritance prevailing among Nayars?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It was, but not since the Nayar Regulation came into force. Since the Nayar Regulation came into force, the children are entitled to one-half of the self-acquisition of their father in the case of Nayars as a whole. In the case of Ezhavas, on the other hand, the rule is applicable only in regard to a small percentage of Ezhavas residing on this side of Quilon

The Section in the Ezhava Regulation is much wider in its application than Section 41 which we are dealing with, because that applies not only to cases of partition but also to intestate succession. Even though a karanavan of an Ezhava tarwad does not like to separate himself from the tarwad and obtain his share, his share is heritable by his children and they can enforce the partition of the acquisitions made in the interest of the tarwad from tarwad funds. Further, this applies not only to marumakkathayam tarwad properties but also to the makkathayam properties of the karanavan. But in our Regulation we restrict it to the case of partition alone. This share that the karanavan may get out of his acquisitions is neither heritable nor alienable. Thus, it is much more restricted in its scope than the similar provision in the Ezhava Regulation. The Ezhavas follow the same system of inheritance; they are just as numerous as the Nayars; and, so far as their economic condition is concerned, they are just as prosperous as, if not more than, the Nayars.

MR. A. GOVINDA MENON (*Alangad cum Parur*): Is Mr. Paramesvaran Pillai aware that this Section is objected to by more than 90 per cent. of the Nayar population?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): No, I am not aware of it. I think the Nayars are not so bad as that. (*Laughter.*) Now, the position of the karanavan of a marumakkathayam tarwad

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[Mr. K. Parameswaran Pillai.]

I submit, is entirely different from that of the other members of the tarwad. He is entitled to the full income of the tarwad property. He can dispose of the income as he likes, subject to certain obligations. The principal obligation or duty of his is only to maintain the members of the tarwad. Subject to that, he can dispose of the usufruct or income of the tarwad property just as he likes. He is not bound to render accounts to anybody, nor is he compelled to save anything out of the tarwad properties. So that, if, during his life-time, after meeting his obligations, such as maintenance of the members of the tarwad, he does not choose to convert the surplus into property or acquisitions in his name or in the name of the tarwad, but gives it away to anybody, no one can ask him why he did so. Therefore, it will amount to this—if he gave away whatever surplus income there may have been in favour of his wife and children nobody can question him. If, on the other hand, he converts it into property, at the time of the division, he may not get any benefit out of it. I submit the very statement reveals its absurdity.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Of course it cannot be legally enforced. But, is it not the recognised duty of a karanavan to save whatever income of the tarwad remains after maintaining the members of the tarwad? Is it not his recognised duty, though it may not be legally enforced?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I know of no law which requires the karanavan to save anything for the tarwad. I know there are certain obligations imposed upon him, namely, the maintenance of the members of the tarwad and of the position of the tarwad.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Then, will he not squander away the income?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not know about squandering. I know that he is not compelled to save anything. No law requires him to do that. If the income is a lakh of rupees, he is not prevented from disposing of the whole of the income, provided he keeps the *corpus* of the tarwad intact. He can go on in the same way as long as he likes, and so long as he does not interfere with the *corpus* of the tarwad, his position is safe.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): From a moral point of view, will he be doing his duty towards the tarwad?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): We are now dealing with law and not with ethics, and, therefore, we must look at it from the legal and not the moral stand-point. Is it not therefore equitable and just that, if a karanavan looks after the tarwad interests and conserves the surplus income for the benefit of the tarwad, he should get some special benefit out of it when he is deposed from that position for no fault of his?

Now, Sir, we have also to take into account the fact that we are dealing with the karanavan not of a poor tarwad but of a sufficiently

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well-to-do tarwad, by the management of which, after meeting the expenditure of the family, a margin will be left for saving. In such cases, the position of the karanavan, Sir, is peculiar. He has all the prestige of the tarwad behind him; he has got a great position in the tarwad. He can, subject to his obligations, dispose of the income of the tarwad as he likes. Suddenly, by a stroke of the pen, by a legislative enactment, you want to depose him. I ask whether it is equitable or moral to do so without making suitable compensation. I know that, when John Stuart Mill recommended that lands should be nationalised, he did not want that all the land should be confiscated but wanted proper compensation to be made to the owners of the land.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What about the junior members of the tarwad who are expecting to become karanavan?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Their expectations we are defeating now.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What is the sort of compensation that they should be given?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*) May I ask Mr. Paramesvaran Pillai if the enjoyment of an expectation is not slight compared with the enjoyment of a right?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Certainly; I think the question should be viewed in that light.

Even when prohibition of drink was contemplated in England, I know the question of compensating publicans who had invested large sums of money in business and set up trade in liquor, was a matter of serious consideration.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Does he approve of it?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Certainly. If you want to deprive him of his trade, you must compensate him. I say, even in such cases, a man is not deprived of compensation due to loss in trade or business. Here is a karanavan who has been in possession of all the income of the tarwad, with the prestige of the whole tarwad behind him, with the income of the tarwad at his disposal, subject only to certain duties and obligations, and we want to depose him immediately and that without any compensation. Even if this Bill provided that an additional share out of the tarwad properties themselves should be given to this karanavan in compensation for his loss of position and prestige, I would be prepared to accept it. We do not go so far. We go only to the extent of saying that if he has managed the tarwad properties well and left a margin after meeting the expenses of that tarwad and utilised that margin for increasing the wealth of the tarwad, then a portion of that increase or increment should go to the karanavan.

MR. C. SANKARA MENON (*Quilon*): Does he keep accounts of income and expenditure?



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[Mr. P. K. Narayana Pillai.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I say that he is not accountable to anybody for the income of the tarwad. He could have utilised it as he liked and that was one point upon which I based my arguments in favour of the karanavan.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Does he not feel that there will be practical difficulties in the way of ascertaining the nature and extent of the acquisitions?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): So far as I know, there are practical difficulties in very many provisions of this Bill. For instance in the case of partition there are very many difficulties owing to the existence of houses and other things which could not be easily divided. I can foresee various other practical difficulties also. That should not deter us from making adequate provision for compensation to those who are likely to sustain loss.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): There are cases in which acquisitions have been made solely with the aid of the junior members of the tarwad. There are families where the karanavan exists only in name, sometimes being rather too old or having sufficient means at his disposal and the junior anandaravars may do the work and the property may be acquired in his name. In the case of the profits of their earnings added to the tarwad property, they ought to get equal shares with him. Is such property to be divided and half of it to be given to the karanavan?

PRESIDENT: You must only put a question and not make a speech.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In regard to Mr. A. Govinda Menon's question, I do not think I am bound to answer. All these conflicting questions should be taken before the court. The court should decide such questions. If Mr. A. Govinda Menon wants me to give an opinion, he must supply me with more facts and more assistance in deciding the question. In determining the question as to what is the acquisition of a karanavan, several circumstances might have to be taken into account and I would ask Mr. Govinda Menon to refer these matters to a court of law for decision when cases arise.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I ask Mr. Paramesvaran Pillai with respect to the Ezhava Regulation whether the provision making one-half inheritable by the children of any particular Ezhava in management, applies to and gives the manager himself a share on partition, or whether it is only for the purpose of intestate succession that the Section has been enacted in the Ezhava Regulation?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It does not make any difference for my argument, because if it is heritable it is much worse than the provision in the present Regulation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Does the Ezhava Regulation provide that the manager on partition should be entitled to half the increment?

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PRESIDENT: Mr. Paramesvaran Pillai says that it does not affect the present question even if the right of inheritance is acceded to.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What about the karanavan?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): He may be or may not be. But, so far as the Nayar Regulation is concerned, it is only when the karanavan enforces his right that he will have to be given a portion. But, so far as the Ezhava Regulation is concerned, in every case, at the death of the karanavan, his children will enforce their right to a portion of the self-acquired properties of the karanavan.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know whether that provision was based on a custom which was prevalent in the community?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not think so. I am not aware of any custom in the Ezhava community different from the Nayar community.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Was any objection raised by the Ezhavas when we passed that Section?

PRESIDENT: I must rule it out of order. That is a provision which we have already made.

MR. A. HOOGEWERF (*Nominated*): Is it not the primary duty of the karanavan as the trustee of the tarwad to do everything in his power to improve the tarwad?

PRESIDENT: That has been repeated, I think, and has been answered. Everybody says it is his duty. It may be his ethical duty.

MR. A. HOOGEWERF (*Nominated*): Then why should half the property also be not taken away?

PRESIDENT: All the present discussion is centred round that alone.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Then again, Sir, the karanavans who make acquisitions are few in number, and, so far as I know, the karanavans who do really make acquisitions are people capable of making acquisitions even without the help of the tarwad funds. So that, if they had not become karanavans of the tarwad, still they will make money by doing some business of their own. Now, in their position as karanavans, though availing themselves of that position and taking up the management of the tarwad, they make the acquisitions from the tarwad funds, they make the acquisitions by their own independent endeavour.

MR. C. SANKARA MENON (*Quilon*): Is it by compulsion—

PRESIDENT: I did not hear your question.

MR. C. SANKARA MENON (*Quilon*): Is it by compulsion that he took the management?

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[Mr. K. Paramesvaran Pillai.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Why should he renounce? There is no question of renouncement now arising because there is no partition of marumakkathayam tarwads. He has the entire control; and the question of renouncement is entirely irrelevant. The whole question arises practically only when the question of partition arises. Till then, his position is safe. He is in possession of the properties. He can dispose of the income of the tarwad properties as well as his private acquisition as he likes. I submit, therefore, that it will be depriving a person of the liberty of making independent acquisition, and when as karanavan of the tarwad he looks after the tarwad interest also, he is deprived of even the benefit of those acquisitions by this partition. I submit, Sir, there is a difference between the father in a Mitakshara family and the karanavan of a marumakkathayam tarwad. Even though the father does not get a full share, he divides only with his sons, the partition being *per stirpes*. Therefore the division cannot be into more than a few shares, and, therefore, the portion that the father gets will be adequate, in a decent family, for his maintenance, and further, the father has no other obligations. The children get their shares and the father has no duty towards them after that. It is quite the opposite in the case of the karanavan. Though he divides from the tarwad, his obligations still remain.

Secondly, the division in a marumakkathayam tarwad is *per capita* and in the division all the male members of the tarwad and all the children down to the youngest baby are also taken into account, and, therefore, if a division take place even in a decently well-furnished tarwad the karanavan's share will be so small that the income from that share will not be sufficient to meet even his ordinary expenditure. I think it is too cruel to turn out a karanavan at his old age, who has been decently maintaining himself out of the property and acquiring properties to the tarwad, without proper provision for his decent maintenance in after life.

Now, I recognise, no doubt, the practical difficulties in working out this scheme. But we have to meet the difficulties and we have got efficient courts of law which will determine what is a man's acquisition and what is not his acquisition, and whether, if he purchases property in execution of decrees obtained by the tarwad, that will be treated as his self-acquisition or property belonging to the tarwad, or whether if the cows give birth to calves they will be treated as tarwad property or as the self-acquisition of the karanavan. These, I submit, are questions which will be properly decided by courts of law and it is impossible to make provisions for every case. Of course we may make safeguards, as far as possible, but we may be driven to courts of law very often, and we will have to take the consequence of legislative enactments. I submit, therefore, that the practical difficulty of working out this scheme should not hinder us from making a suitable provision for any other subject which is just, equitable and reasonable, and

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to my mind, Sir, it is very just, very equitable and very reasonable, and we would be doing a great injustice to the class of karanavans if we did not make a provision of this kind in their favour.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Sir, I beg to oppose the amendment. Mr. Paramesvaran Pillai has given very strong reasons for retaining the provision in the Bill. Of course, there seems to be a lot of opposition against the karanavan getting his money, because it is stated that the duty of the karanavan being that he should be in charge of the affairs of the tarwad and manage such affairs, he does not deserve any extra remuneration for having discharged that duty. I beg to differ from that point of view for various reasons.

In the first place, if we take the case of ordinary partnership, every partner is certainly bound to look after the affairs of the partnership. There is such a thing as a managing partner who is entitled to a share, and to be paid for for the actual work that he does, for looking after the affairs and for the real trouble that he takes in the matter.

MR. C. SANKARA MENON (*Quilon*) : Is he the manager of a family ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There is no use of interpellating me at the outset.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : May I ask Mr. Subba Aiyar whether a managing director is entitled to remuneration irrespective of the profit or loss of the concern ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Certainly. Here we are restricting it. That is another argument in respect of my position. Irrespective of the fact that tarwad property has been alienated or not, the karanavan should, I say, be entitled to some consideration at the hands of the Council. So that, the fact that in such cases we have omitted any share to the karanavan is an argument in his favour and not against him. I request the members of the House to wait for a few minutes before I finish some of my important points. Otherwise, the thread of the argument may be lost. Of course, I am prepared to answer any series of questions and stand cross-examination as long as my friends would like to have it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Before commencing the serious portion of the arguments (*laughter*), may I ask a question ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Is not a managing partner appointed with the consent of the other partners ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the case of the karanavan is he so appointed ?

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, but he has got a right. If a person says that he is not discharging his duty properly, his right may be removed. I suppose my friend Mr. P. K. Narayana Pillai knows that, when we go in for analogies in certain matters the analogies do not hold good on all matters and cannot be pressed too far.

The point that we were at was whether a person, who does work for the benefit of somebody other than himself, is not entitled to some consideration. That is the point we are at and not to see whether the analogy of partnership will hold good in all its aspects. The karanavan, I say, as the representative of the tarwad, has been doing a certain amount of work. He should be entitled to remuneration. Mr. Parameswaran Pillai put it, and rightly too, that if a karanavan, instead of taking up the management of a big tarwad in his own hand, had spent all his intelligence and energy in looking after his own affairs, of his wife and children, he would have been in a much better position than that in which he is by adding to the tarwad itself. How are we to compensate such a karanavan, when at the fag-end of his life he is told that he will get only the share of the juniormost individual—there may be 50 or 100 members in the tarwad—in that tarwad? In such cases it may well be said that he deserves consideration and that he should be remunerated.

Again much was said as to the nature of his duty—whether it was not his duty and all that. I say, even in these days when every-body can say that a man must discharge his duty—and as my non-official friends know it is more often a case of non-performance of duty properly than performance of one's duty—when a man does perform his duty we do know as a matter of fact that the master generally recognises and appreciates the service of the employee who is bound to discharge his duty properly and remunerates him or does some other thing in an appreciative manner. Even if you look at it in that aspect, such an appreciation, I believe, must be made.

Again, going to the management of the tarwad and the makkathayam family, an analogy was drawn and I believe a mistaken and a wrong analogy, because, in the case of makkathayam Hindus governed by the Mitakshara law, for instance, there is only one interest for the manager to look after, namely the natural interest of the heirs. He will be guided by natural love and affection towards his wife and children. There is no conflicting interest at all, and there is nobody else whose interest he has to take care of. But, in the case of a tarwad, we find conflicting interests. We have got individuals practically non-co-operating.

MR. S. KRISHNA AIYAR (*Mavelikara cum Kartigapalli*): Are there not joint Hindu families?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Even then, such contingencies are very rare. They have got definite shares and they will see that the money is not wasted away. But, in the case of marumakkathayam tarwads, we have got a karanavan and, as

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Mr. Kumara Pillai said, junior members not living in the tarwad itself and junior members who always take the karanavan to task and non-co-operating junior members who will not allow him to do anything properly of his own accord. On the other hand, the interests of his wife and children he has to look after. If a karanavan gets over all these difficulties, satisfies his wife and children and has still the interest of the tarwad at heart and saves some money and thereby accumulates a sum of money, I think such a karanavan deserves to be appreciated and he should be given a specific share in the property as Mr. Parameswaran Pillai put it. If, after this Nayar Regulation Amendment Bill is passed, his position is to be reduced all at once, I say his position becomes pitiable.

Then again, it was suggested that it would lead to practical difficulties and to litigation, and Mr. G. Parameswaran Pillai said that a karanavan would never part with the property without raising a lot of objections. I believe all these objections are hypothetical and not real. It is very easy to know what the tarwad was worth when a karanavan became a manager and what it is worth at the time when the partition is claimed, and, therefore, it is very easy to ascertain what the difference between the two is and what the income or accretion is. Therefore, there could not be any difficulty. As for the suggestion that a karanavan may demand more than he deserves, and, therefore, it is likely to lead to civil suits, I believe that is not going to save us very much. For, I am positively of opinion that the partition provisions that we have just enacted are likely to lead to very many litigations and I do not think that in any tarwad all the members would be agreed as to the extent of the share that a particular person is entitled to or as to the nature of the property. Suits will probably occur and in all probability occur. If the karanavan was allowed to share half of his self-acquired property it was suggested that suits would increase. I do not think that argument is well-founded and I think it is more imaginary than real. Perhaps there is some difference between the wording in the Nayar Regulation and that of the Ezhava Regulation. I believe it will be better to adopt some other wording instead of "with the aid of tarwad funds." For that purpose, we may adopt Mr. Madhava Variar's amendment which says "with the aid of the income of the tarwad properties". If you adopt that amendment it will save a lot of misconception. As Mr. Parameswaran Pillai said, the karanavan is not under any legal obligation to invest all his savings in a bank. But he is at liberty to spend the balance in any way he likes after maintaining all the junior members of a tarwad without giving room for any complaint. That being the case, if he gives all the property to his wife and children to the prejudice of the tarwad, I say that in favour of such a karanavan we should not do anything. Therefore, if the acquisition is out of the income of the tarwad property, it should be regarded as his self-acquisition. It is only to the extent of one-half of that that he should be given. I therefore strongly oppose the amendment.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I asked Mr. Kumara Pillai about the analogy of the karanavan and the

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[Mr. A. Govinda Menon.]

judge. The judge is getting a monthly pay and the karanavan gets only a prospective pay. Therefore my suggestion was that nothing that comes from the saving of the tarwad funds should be given to him for any special item of work.

PRESIDENT: You are making a speech.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): No, Sir, it is only a personal explanation. What I say is that a judge gets a monthly salary and a karanavan gets his pay only at the end of his tenure. Therefore I am of opinion that no additional remuneration need be given to him for doing any particular piece of work.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Sir, I regret to say that I am not in the least convinced by the arguments advanced by my friends in opposing my amendment. At the outset, I may say that unfortunately I am the karanavan of my tarwad, as Mr. Velu Pillai raised that question.

MR. K. PARAMESVARAN PILLAI (*Tiruvella*): May I know from Mr. Govinda Menon whether he has saved anything by the management of the tarwad?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): It is only some months since I became the karanavan of my tarwad.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think that he will be so foolish as to admit that he acquired property on behalf of the tarwad.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): One point urged for the karanavan being given one-half of the share is that all along he has been in a position of comfort and dignity, and that if this is not given he will not be in a position to maintain himself in the same position with the one individual share which may be given when the tarwad property is partitioned. In speaking of the acquisitions of the karanavans, we have to consider two kinds of Nayar tarwads. Mr. Kumara Pillai is right when he said that, in some parts of Travancore, especially in South Travancore, the acquisitions to a tarwad are generally made by the karanavan and by his children. I must acknowledge that he is right. But in the case of North Travancore tarwads, the acquisitions are made by the joint efforts of the junior members and the karanavan. In most cases, the karanavan will be only a namesake. He will sit quiet and the junior members will be working for the common benefit of the tarwad. So is it fair, equitable and just, I ask, that these joint acquisitions of all the members of a tarwad should be divided equally between the karanavan on the one part and the junior members who contributed to the acquisition of wealth to the tarwad on the other?

Another argument advanced by Mr. Paramesvaran Pillai was that the karanavan had absolute control over the income of the property and that, if he wanted, he could have spent the money without leaving a single

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cash. When I questioned him about it he said that it was a legal point that we were discussing. I think any legislation which is opposed to morality is not worthy of consideration in this House.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know from Mr. Govinda Menon whether there is anything immoral in giving something more than his ordinary share to a karanavan in a partition?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I do not think there is any question of morality or justice in giving him such a share.

MR. N. KUMARAN (*Nominated*): Does absence of morality mean immorality?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): It may be true that no legal injunction exists restraining him from making use of that particular income which remains after meeting the expenditure of junior members. So far as my experience goes, I can say that there is no tarwad in which the junior members are properly looked after and I can challenge anybody with regard to this matter.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know whether Mr. Govinda Menon would concede one-fourth?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I do not concede anything, because he is not entitled to anything more than an ordinary share. If he acquires anything, it does not mean that he is entitled to it, because he was morally bound to use it for the use of the tarwad. No court has decided that he is bound to accumulate all the savings from the income of a tarwad. If at all he does so, he does it only as a moral duty and I do not think that it ought to be rewarded in such a way as this. What I say is that a trustee of a property, which a karanavan is, is bound to do so many things in order to bring in additional income to the tarwad. Therefore, in justice to the junior members of a tarwad, I think that the karanavan can be given no greater share than an ordinary individual. With these words, I press my motion.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We have already accepted the same provision in the Ezhava Bill with respect to the share of the karanavan. So I say here also the principle may be recognised.

The amendment of Mr. Govinda Menon was put to the vote and lost.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I may be permitted to move my amendment last.

PRESIDENT: Yes.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): I beg to move the following amendment:

*Add, at the end of the Clause, the following:—"but in no case shall it exceed one individual share, or himself get more than a double share on the whole."*



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[Mr. V. Subba Aiyar.]

I had sent in a long list of amendments under family management curtailing the powers of the karanavan and enforcing certain duties and responsibilities on him. Under those circumstances, I thought it necessary that the karanavan should be given this additional privilege under Section 41. But unhappily those amendments do not find a place in the Bill, and hence I was rather indifferent about this Clause 41 being retained in the Bill. The fate of Section 41 has now been decided and hence I have to press the amendment all the more. Karanavans are not obliged to keep any proper accounts and hence they are decidedly at an advantage over the anadaravans to show a very large increment in the tarwad property as new acquisitions—at least the first set of karanavans now created. Hence I beg to move that this limitation at least be imposed by adding this proviso at the end of the clause.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I beg to second that amendment. I stated that, when Clause 41 was actually put into practice, it would lead to considerable practical difficulties. When I stated that, the idea was that a lot of difficulties would arise in ascertaining exactly the extent of acquisitions made. So if you can definitely fix some maximum beyond which the karanavan's share will not go, there will not be so much room for agitation between the junior members on the one hand and the karanavan on the other. Here Mr. Raja Raja Varma's amendment prescribes the maximum that in no case shall it exceed one individual share, or himself get more than a double share on the whole. It is commonly noticed in partition deeds amicably arrived at that the karanavan or the manager is given a double share. So, I think this House will save considerable difficulty and time by accepting this amendment in the practical working of the Section. I would therefore support Mr. Raja Raja Varma's amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have again to oppose this amendment. I think the share cannot be reduced to an additional share. I can recognise that in the case of very big tarwads where the karanavan has made large acquisitions already an additional share might be ample. But such cases are rare. We are not to take into consideration exceptional cases in considering general legislative enactments. There are many tarwads where the income is not very much, but at the same time the income might be sufficient to leave a margin for saving and a modest acquisition made out of it. Such cases are very common, and there, an additional share will be far too inadequate. For these reasons, I oppose the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I also oppose the amendment. I do not think I have got anything more to say than what Mr. Parameswaran Pillai has said.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): I have nothing more to say by way of reply.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have nothing more to add.

The amendment was put to the vote and lost.

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MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*) : Sir, I propose two amendments to Clause 41. The first is: "In line 1 for 'one-half' substitute 'one-fourth'. And the second amendment is to delete the words "with the aid of tarwad funds" and to substitute the words "with the aid of the income of tarward properties." Before moving I have to make a verbal alteration.

PRESIDENT: Will you please move your amendments one by one Mr. Madhava Variar ?

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): I move my first amendment to Clause 41 which runs as follows:

*In line 1 in Clause 41 substitute "one-fourth" for "one-half."*

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is an amendment which may be considered. I am not able to say how it will affect the karanavan. It appears to me to be reasonable and I do not oppose it but leave it to the sense of the House.

PRESIDENT: Do you oppose or accept it, Mr. Subba Aiyar ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I wish to be neutral in the matter.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, for the purpose of stimulating the discussion, I am prepared to oppose the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : May I know whether he is in order as the Government member had his say ?

PRESIDENT: Yes, he is in order.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*) : As I have not been ruled out of order I shall continue. This question has been discussed for some time when it was said that the karanavan should be given half of his self-acquisition. But there was a number of people on this side of the House and as well as on the other side who for all practical purposes argued on the assumption that half of the self-acquisition should be given to him. Mr. Madhava Variar proposes that instead of 'half' 'one-fourth' may be given without giving any reason and without enabling us to forget the impression that has been carried to our minds by the lengthy discussion on the previous amendment. According to Mr. Paramesvaran Pillai the shares people will be getting from the tarwad property are bound to be small and he also adds that it is on account of personal interest, efficient management, and sense of duty that a karanavan, who is handicapped in many ways, is able to save some money. I think ordinary equity requires that one-half at least should be given to him. It is only in the case of profit that he gets a share and the profit depends upon the personal capacity of the karanavan. Under these circumstances, I accept the amendment of Mr. Madhava Variar.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): I did not give reasons in moving my amendment, because the question was discussed thread-bare. There is also a volume of opinion,

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[President.]

that the karanavan should not be given anything. As a *via media* I have proposed this amendment.

PRESIDENT: The other amendment has been lost already.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): That is only for the deletion of the whole clause.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): What is the evidence to say that members of the House are satisfied in giving one-fourth to the karanavan?

PRESIDENT: He did not say that.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have nothing more to say.

The amendment was put to the vote and carried.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): With your permission Sir, I beg to move my amendment after making a verbal alteration. It runs as follows:—

*In Clause 41 in line 3, delete the words "with the aid of tarwad funds", and substitute the words "with the aid of the income from tarwad property."*

PRESIDENT: I take it that the House accepts the amendment of Mr. Madhava Variar with the verbal alteration he has made.

Then there is the amendment of Mr. G. Parameswaran Pillai.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I think it may be taken after Clause 42.

PRESIDENT: Then there is the amendment of Mr. M. N. Pillai to Clause 23. You may move your amendment Mr. M. N. Pillai.

MR. M. N. PILLAI (*Trivandrum*): It is an identical motion.

PRESIDENT: You must move your amendment when I ask you to move it.

MR. M. N. PILLAI (*Trivandrum*): Add after Sub-clause (1) the following:—

*"But property acquired by gift or bequest by the wife or widow or child or children, from the husband or father, as the case may be, before Regulation I of 1088 came into force, shall, if any of the children were alive at the time when Regulation I of 1088 came into operation, belong to such children and lineal descendants of predeceased daughters, sons and daughters taking the properties in equal shares and the lineal descendants of a predeceased daughter taking what such daughter would have taken had she lived at the time Regulation I of 1088 came into force."*

PRESIDENT: Will you please wait? I see there are amendments to Clause 42. Yours is only an addition to them. So we have to defer the consideration of your amendment.

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MR. S. PARAMESVARA AIYAR (*Secretary to Government*): Are we going to consider the amendments to Clause 42?

PRESIDENT: Yes, we are. The consideration of some prior amendments was deferred until the consideration of the amendments to Clause 42. I am just considering the order in which the amendments to Clause 42 should be taken up. I think Mr. P. K. Narayana Pillai's amendment should be taken up first.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I do not see any amendment for the total deletion of that Clause.

PRESIDENT: Mr. M. N. Pillai was referring to the total deletion of a clause.

MR. M. N. PILLAI (*Trivandrum*): Where is that amendment? Do you mean my amendment to Clause 23?

PRESIDENT: Yes, I find, however, that it does not relate to this clause—Clause 42.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is with reference to Clause 23.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have sent in two amendments. The first is to insert the word "or" before the word "bequest" in line 1 and the next is to delete the words "or in any other manner" in the same line. These amendments relate to the vagueness in the clause itself. "Property acquired by gift or bequest or in any other manner from the husband or father before Regulation I of 1088 came into force." That is the clause as it stands at present. There are two expressions in this clause which are of the ambiguous variety. First of all, the expression in the Section "in any other manner from the father or husband" would be treated as tarwad property under this clause. I ask the question: Suppose two of the children purchase properties from the father on paying hard cash; would that be a case of acquisition from the father for this clause?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That will be a case of self-acquisition.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Whether this is self-acquisition or not in the present instance, the Section seems to comprise such acquisition. Property acquired by gift, bequest or in any other manner from the father or husband before Regulation I of 1088 came into force shall belong to the tarwad. So, if, on payment of money, two of the children purchase property from their father, it will be treated as tarwad property. That is the effect of the section. The usual methods of acquiring property are by gift, by bequest, by purchase, or by exchange or on mortgage or on leases. These are the usual methods of conveyance and transfer of property. The expression "in any other manner" is a disastrous expression inasmuch as it would suck into its operation all manner of other acquisitions for valuable consideration. It is to avoid such a contingency that I move that the expression "or in any other manner" be deleted.

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[Mr. G. Parameswaran Pillai.]

RAO BAHADUR K. A. KRISHNA AIYANGAR : (*Nominated*) (*Deputy President*) : I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Supposing after the father's death the anandaravars out of regard for the karanavan's wishes give some property to the karanavan's children. Under what category will it come?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : That will be a case of gift.

PRESIDENT : Not by the father or the husband.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : In all these cases it will be a case of common gift. That will not be from the father or the husband, as the President shrewdly observed; it will not be a case of acquisition from the father.

PRESIDENT : That would be a windfall. I think the amendment may be accepted. Have you any objection, Mr. Parameswaran Pillai ?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : I do not think I can accept the amendment. They are the saving words in the clause, because it may not always be by actual gift or by bequest that the children acquire properties from the father. There are other ways also. Some purchases may be purchases in favour of children. Whether they will amount to a gift is a matter of interpretation. Therefore, in whatever manner it may be that the children acquire property from their father, whether by way of actual gift or by bequest or money payments or other ways, this Section must apply. Therefore it is better that the saving words are there. In regard to my friend's question as to whether it will not include cases where children acquire property for full consideration from their father, my answer is that it is purely a matter of interpretation, and it appears to me that the principle of *ejusdem generis* will apply to it. Because when the words "in any other manner" occur along with the words "gift or bequest," they must mean in that manner or in an allied manner, like gift and bequest and so forth, and will not include cases of actual purchase for valuable consideration.

MR. T. LAKSHMANA PILLAI (*Nominated*) : Why not insert the word "allied" ?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : I submit therefore that it is better that these words are there, as we do not know what cases might arise. Unless there is the chance of any harm being done to anybody by inserting these words, it is better that the words are there.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : I support the amendment, and agree with Mr. P. K. Narayana Pillai in thinking that the expression "or in any other manner" is vague and should not be attached to this clause. As a matter of fact we find

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already similar words appearing in Section 17 of the existing Regulation. And it has given room for a lot of conflicting rulings and it is very desirable that we do not leave it to courts of law to decide whether the principle enunciated by Mr. Paramesvaran Pillai should be accepted or not. The expression "in any other manner" has a significance of its own and property acquired in any other manner from the father may *prima facie* mean property acquired by sale or by purchase from the father on payment of consideration even. It may lead to that interpretation. Whenever we find that it is capable of a contrary interpretation, especially in these days, it is not at all safe that we should leave it in that doubtful manner to be decided by courts of law.

MR. C. SANKARA MENON (*Quilon*): May I know whether the expression 'in any like manner' would not serve the purpose?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Will Mr. Sankara Menon explain what is meant by 'in like manner' by giving an instance?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): My friend Mr. Paramesvaran Pillai said that there might be other cases such as benami in favour of a son by the father. It will be treated as a gift in favour of the son or in favour of the wife as the case may be. To be consistent also with Section 23, the discussion in respect of which is already over,—

PRESIDENT: Not fully over.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): There is no such amendment in respect of clause 23. Clause 23 reads as follows:

"(1) Property acquired by gift or bequest by the wife or widow or child or children, from the husband or father as the case may be, after Regulation I of 1088 came into force, shall, unless a contrary intention is expressed in the instrument of gift or bequest, if any, belong to the wife or widow and each of the children in equal shares.

"(2) The rules for the devolution and distribution of the property of an intestate as hereinbefore provided shall, so far as they may be, apply to property mentioned in sub-section (1), as also to property acquired under Regulation I of 1088 and under Section 22 of this Regulation."

We are now dealing with the same sort of property as the one dealt with in that clause. Clause 23 relates to properties acquired after Regulation I of 1088 came into force and Clause 42 to properties acquired before Regulation I of 1088 came into force. When you are using two kinds of language in respect of these two clauses—in one case definite and in the other case vague—it will be absolutely unsafe to rely upon courts as to what view they will take. To be consistent and to avoid vagueness and doubtful interpretations it is absolutely essential that the expression 'in any other manner' should be deleted. We cannot conceive of any case where it will not come under gift or bequest, and especially, having regard to the expression in Clause 23, it is desirable that we should not complicate the matter while there is already so much of complication about it.

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, with great respect to my friend Mr. P. K. Narayana Pillai, I am not inclined to think with him. "Or in any other manner" will mean purchased by the person or in any other like manner. I daresay we are familiar with the phraseology in enactments, and, as Mr. Paramesvaran Pillai observed, the rule of interpretation, *viz.*, *ejusdem generis* will apply. It must be of the nature which has been mentioned previously. Even without using the words "or in any other like manner" if we say in any other manner, it will mean in such similar manner, that is, something like a gift or bequest. Mr. P. K. Narayana Pillai wants us to name a clause which will not fall within property gifted or bequeathed. If a property is purchased in the name of the wife or son with money given by the father which the son had with him, whether that can be regarded as property gifted by the father is a question that I ask my friend. So that what I say is that it is also intended to cover such cases. Not only actually gifted by the father or bequeathed by the father or property acquired with the funds given by the father—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know whether that would not be a better form to adopt than the one in the clause—"or with funds supplied by the husband or the father"?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Of course, it does not contemplate cases where the son pays hard cash and purchases property from the father, because it will not be a subject-matter of litigation or a matter of any dispute whatever, so that it is his self-acquisition. As to my friend Mr. G. Paramesvaran Pillai's suggestion about Clauses 23 and 42, I think we are following Section 17 of the Nayar Regulation. No doubt Section 17 says:

"Property obtained from the husband or father by the wife or widow and child or children by gift or inheritance shall, unless in the case of gift a contrary intention appears from the instrument of gift, belong to the wife or widow and each of the children in equal shares with right to individual partition."

The real point of it is this. So far as Section 17 is concerned, it is not necessary. It only contemplates a certain class of cases, namely, property which was gifted by the father under partition after 1088—that which was equally divisible among the children in equal shares. It is for that purpose that each of the widows and children is entitled to equal shares with the right to individual partition. A particular class of property was made partible in equal shares among the wife and children in the case of makkathayam and it was distinctly restricted to gift or inheritance alone. Of course, we are also adding bequest here so far as these properties are concerned. Before 1088 it might have been various classes which we are not in a position to trace. Probably that must be the reason why that was also put down. After 1088 there cannot be any room for vagueness or anything of the kind, because, if it was given by the father

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it was very easily ascertainable. But in the case of properties acquired before 1088, it may not be actually by a registered instrument. Strictly speaking, it may not be a gift, it may not be a deed of settlement; it may be private property which was given by the nephews of the father, it may be out of the sum of money given by the father, which was ultimately accumulated and purchased in the name of the son. All these and ever so many other sources are possible for the wife and children to have property acquired in that manner. But in the case of acquisitions after the Regulation there is a specific provision by which individual partition is allowed. Hence the difference between Clauses 23 and 42. If my friend seriously thinks that the expression "in any other manner" will enable the court to include a property purchased by a son from the father, which I think is not ordinarily possible, I have no objection to amend the clause by introducing the words 'in any like manner.'

PRESIDENT: Directly or indirectly, or with funds supplied by the husband or the father or in any other manner purchased for valuable consideration.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Because I am inclined to believe before 1088 it may not be possible to have anything definite. There may not be actual gift or bequest and yet there may be property which is traceable to the money given by the father; such cases should be covered. Therefore I believe the expression 'in any other manner', though somewhat vague, should be there. I do not think there is any doubt in regard to that expression. If there is any such doubt I think the expression 'in any other manner than for valuable consideration' will exclude such cases.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): How?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): What is the doctrine of *ejusdem generis*? 'In any other manner' means in 'like manner'.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If the words 'in any other manner' would not qualify the Section, there is no necessity that they should be there. The expression "in any other manner" "so far as the law allows" "so far as it may be deemed fit" does not convey any specific idea. So far as I have been able to conceive, it is a gift or bequest that will be resorted to by a father in order to give property to his children. I cannot think of anything else. I was listening to Mr. Subba Aiyar with great attention, and I was really looking forward to some instances which he would give us, but he gave us only an instance and that was a case of acquisition with funds given by the father in the hands of one of the brothers. The position of the brother is that of a bank in which money is deposited. If the brother does not give the money to the other brothers that is a matter of suit with which we are not concerned. That does not mean any difference in principle. Knowing as we do that small unintentional loopholes when allowed to remain in a Section are taken advantage of by judicial officers to give decisions in defiance of specific directions of the law, especially Section 26 of the Nayar Regulation, and that when an



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[Mr. P. K. Narayana Pillai.]

astute lawyer is prepared to put forward arguments the courts are influenced in the manner prohibited, I submit Sir, that the words 'in any other manner' may be dragged in for various purposes which we do not now contemplate. Now, in the light of the fact that the expression is very vague—my learned friend Mr. P. K. Narayana Pillai called it as of an ambiguous variety; I would call it omnibus or omniferous variety—this may be very troublesome and, as it has not been shown that the retention of the expression is necessary, I also support the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I press my motion and I beg to maintain that there is no necessity for this provision which my friend is anxious to retain. In the first place while admitting the expression to be vague, my friends Mr. K. Paramesvaran Pillai and Mr. Subba Aiyar contend that the expression will have to be construed on the basis of *ejusdem generis*. This does not really console me, for it is only when compelled to do so by the force of language used elsewhere in the Statute do courts now a days adopt the restricted interpretation on the *ejusdem generis* basis. When the expression timber or any other forest produce came up before the High Court the other day, a division bench of the High Court refused to interpret the term 'timber' on the basis of *ejusdem generis*. So one cannot foresee which way the cat would jump. Here, an all-comprehensive expression 'in any other manner' is put down and when challenged to mention any manner on a par with the expression used before other than gift or bequest, my friends, the adherents of the present existing provision, were found fumbling at it, being unable to give a direct instance. Therefore, the expression can only denote any other manner entirely different from the categories already mentioned. Then of course an amount of uneasiness was expressed. It was said there might be acquisitions from makkathayam properties, or the income of makkathayam properties already in possession of the sub-tarwad and all that. With respect to all that we have got a residuary clause corresponding to the existing Section 26 which says that this measure does not propose to deal with or repeal any of the existing rules of the marumakkathayam law. The existing practice is to the effect that the purchase made with the assistance of the income derived from makkathayam property would follow suit and would partake of the character of the makkathayam property. Such being the law already in the field and such practice being not attempted to be disturbed by the present measure, absolutely nothing like any anxiety need be entertained on the ground of these acquisitions. Therefore, I am submitting that, for the purpose of clarity of expression, simply to retain gift or bequest is quite sufficient; all other cases are sufficiently provided for in the residuary clause towards the close of the Bill. I think it is Clause 44 or 45. That Section deals with the question which is dealt with in the present instance. Therefore those properties will not get out of the Regulation. We provide enough contrivance and a safety-valve there. Hence I am submitting, in order to avoid unforeseen consequences, it is better that we express clearly on the subject

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Then as to the question whether such provision itself would be reasonable and sustainable—as to that I would draw the attention of the House to what I have already said on Section 23. My amendment to that Section has been thrown out. All the same, I may point out that gifts made to individual children have been provided in Section 23 as belonging to all the children. Of course, *prima facie* it may strike one as unreasonable. For example, a jewel given by a father to one of his daughters will be shared under Section 23, if Section 23 is to be adopted, by all the children.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Unless the contrary intention is expressed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Where is the contrary intention in the matter of a movable property like a jewel given to a daughter? In the absence of a document, the interpretation according to the provision will be that the jewel which was given to the daughter out of love, would be the property of all alike. That is just the provision already adopted. In view of that provision I am submitting that there will be absolutely nothing in the path of the High Court to interpret the expression 'in any other manner' as not including purchase by the son from the father. In spite of the assurance given, that is the only possible interpretation and that will not be interpreted as *ejusdem generis*. I am not prepared to accept my friend's explanation, and risk chances in the matter or ask any person to lend his name to a leading case. Therefore I press my amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Even in the instance quoted by my friend I do not know whether he quoted properly. That is with regard to the High Court's interpretation with regard to timber or any other jungle produce. Of course, timber will not be any other jungle produce and will not therefore be interpreted on the ground of the doctrine of *ejusdem generis*. It will be the doctrine of the former clause and not according to the subsequent clause. Anyhow, if my friend is so insistent about it I would rather object to delete 'any other manner' and wait and then amend the law when difficulties crop up.

Mr. Narayana Pillai's Amendment was put to the vote and carried.

The following amendment was not moved:

MR. V. KUNJUKRISHNA PILLAI:

Line 2. Add after the word "shall" the words "in the absence of his widow or children" living.

MR. A. GOVINDA MENON (*Alangad cum Parur*): I beg to move that the following be added at the end of the clause:—

"*Unless either the father or the husband or any of the donees or devisees are alive at the time when that Regulation came into force, in which case such property shall be treated in the same way as property inherited under the provisions of Chapter IV of this Regulation.*"

PRESIDENT: You mean "were alive"?

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[Mr. K. Parameśvaran Pillai.]

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Yes.

The object of moving this amendment is to give properties of the description mentioned in the clause acquired before the passing of the Regulation the same character as property acquired after Regulation I of 1088, so that the range of makkathayam property be more widened.

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I object to the amendment. In the first place, Mr. Govinda Menon's amendment is very vague. I am not able to understand what he means by donees or divisees, because, as far as I know, before Regulation I of 1088 came into force, the ordinary intention of the father in giving properties to the children was that his sons and daughters and the descendants of his daughters, may take the property and enjoy them.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In such cases a devisee or a donee would include not only the sons and the daughters of the donor but also the descendants of the daughters themselves. Now I do not know whether Mr. Govinda Menon goes so far as to include within the expression 'donee or devisee', all the persons or group of persons to whom the gift is intended by the donor. Apparently he means the sons and daughters of the donor and not the descendants of the donees; but that is not clear from the amendment. If on the other hand we are to interpret it as meaning the persons for whose benefit it is intended, then it would appear to mean that, so long as the persons, or group of persons, for whom the gift is intended by the father, howsoever they may be, the Section would not apply.

Then, secondly, my objection is that Section 17 of the Nayar Regulation, to which this is an amendment or an appendage, has been the subject of conflicting interpretations by the High Court. The first interpretation was that that Section was intended to include not only gifts or properties acquired by gift or bequest or in any other manner after Regulation I of 1088 came into force, but also all bequests and gifts made prior to Regulation I of 1088. That was dissented from by another Bench. Then it was referred to a Full-Bench and the Full-Bench decided that Section 17 applied not only to gifts and bequests made subsequent to the passing of the Regulation I of 1088 but also to those made prior to Regulation I of 1088. Another Full-Bench overruled that decision. Recently another Full-Bench refused to follow that ruling. So that what exactly the law is at present is not clear, as to whether Section 17 of the Nayar Regulation applies or whether it does not apply to gifts or bequests prior to Regulation I of 1088 or after 1088. Anyhow it appears to me that it ought to be made definite. The question is, in what manner it ought to be made definite. If we accept the principle of marumakkathayam law, gifts and bequests made by the father were treated as property belonging to the sub-tarwad of which these people and their descendants in the female line formed the members, and so

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the property became vested in the sub-tarwads and was subject to the incidence of marumakkathayam law. Hence there is the present partition law (Section 42) which applies to all such properties. My friend wants to make an exception in that it should not apply to properties obtained before Regulation I of 1088 came into force, if any of the donees is alive. I submit that it is a very arbitrary distinction. There is no legal principle involved in it. There is no real basis for any such distinction. His only reason is that, because some of them are alive, those properties should be treated in a different manner from gifts where all the donors have died.

Further, it appears to me that if you accept this amendment, you will be probably divesting vested rights. These properties have now become vested in the sub-tarwad and the children of the males have no interest in the properties while the children of the daughters of the donor have acquired an interest in those properties, and you will be divesting those interests. There is absolutely no warrant for doing it. I therefore very seriously oppose the amendment put forward by my learned friend.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I must candidly confess I did not understand the amendment. (*Laughter.*) Nor did Mr. Govinda Menon or his seconder Mr. Kunjukrishna Pillai take the trouble of explaining to the House what exactly is meant by the amendment. So that I really do not know what to do. Anyhow I shall try to explain what I think is meant by the amendment. It is stated that, before Regulation I of 1088 came into operation, if any property were given as makkathayam by a husband or father, that property under certain conditions should be regarded as property governed by Chapter IV of the present Regulation. In the first place, what on earth had a father or husband to do with reference to makkathayam property if he is alive or dead, I for one cannot see. If a father gives property to his daughters or children, or a husband to his wife, why should his being alive or dead have anything to do with the line of descent, or the mode in which the property should be divided? So that that thing may be left entirely out of consideration.

The next thing is that, if any of the donees were alive, the property should be equally divided among them. That portion is equally dangerous. We know that, before Regulation I of 1088 came into force, the law was that whatever might have been given by the father was given to the wife and all the children born or to be born. That is the ordinary presumption. In other words the presumption was that it belonged to a sub-tarwad. Now, that was the law before Regulation I of 1088, and that law was not seriously interfered with by Regulation I of 1088 itself. Of course there was a Full-Bench ruling extending the provisions of Regulation I of 1088 to prior gifts. Subsequently there were two Full-Bench rulings different from the first and emphasising that it must be treated as sub-tarwad properties. Fortunately we have passed the High Court Regulation and we are now in a position to say—I daresay the High Court will take care to see—that the decision is hereafter repealed by a Full-Bench. Otherwise we are in danger.

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[Mr. A. Govinda Menon.]

We had a Full-Bench ruling of three Judges. It was repealed by a Full-Bench ruling of two Judges, which was subsequently repealed by a Full-Bench ruling of three Judges. This is due to the defective nature of the High Court Regulation wherein it is said that a Full-Bench shall be constituted of three Judges. We will be in a better position hereafter after the present Regulation, and the High Court will take care to see that such decisions as have created vested interests receive the attention of the Full Court and do not suffer. So that we may say that the Full-Bench ruling just referred to was consistent with the law before Regulation I of 1088 came into force. The Select Committee which considered the Bill thought it necessary to treat it as sub-tarwad property. Sections 34 to 38 have been passed, and sub-tarwad property will be equally liable to partibility. Therefore it may not be impartible but partible. I do not see why, in the presence of Sections 34 to 38, this amendment is necessary. As I said at the beginning, there is nothing in Mr. Govinda Menon's speech to impress upon the House the necessity of amending the provision recommended by the Select Committee. I think we may take it that Mr. Kunjukrishna Pillai or Mr. Govinda Menon has nothing to add. For these reasons, I think this amendment will not commend itself to the House.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): In reply, I have only to say that, as far as the amendment is concerned, it is quite plain and it can be easily understood by anyone who knows English. (*Laughter.*) If a body of six Judges of the High Court can pronounce three different judgments on one and the same point, I do not know why we should not make the provision clear.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Therefore it is that we have made Section 42 very clear and plain.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): What I want to say is that the makkathayam system of inheritance should be exended to properties acquired before Regulation I of 1088, provided the donees or donors or devisees are alive at the time when Regulation I of 1088 came into force. That means practically they were alive at the time when Regulation I of 1088 came into force.

PRESIDENT: Do you press the amendment?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Yes.

The amendment was put to the vote and lost.

The Council adjourned for lunch at 2-15 P. M. and re-assembled after lunch at 3-12 P. M.

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***Clause 23.***

The following amendments were not moved:—

MR. M. N. PILLAI:

Add, after sub-clause (1), the following:—

"But property acquired by gift or bequest by the wife or widow or child or children, from the husband or father, as the case may be, before Regulation I of 1088 came

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into force, shall, if any of the children were alive at the time when Regulation I of 1088 came into operation, belong to such children and lineal descendants of predeceased daughters, sons and daughters taking the properties in equal shares and the lineal descendants of a predeceased daughter taking what such daughter would have taken had she lived at the time Regulation I of 1088 came into force."

MR. T. KUMARA PILLAI:

Sub-clause (1). Re-number sub-clause 23 (1) as 23 (1) (*a*), and add the following as 23 (1) (*b*):—

"Property so acquired by gift, bequest or in any other manner from the husband or father, before Regulation I of 1088 came into force, shall also belong to the wife or widow and each of the children in equal shares if any of them be living at the date of Regulation I of 1088, and not be treated as the tarwad property of the donees or devisees and of their *thavazhee*."

PRESIDENT: There is another amendment to Clause 23 standing in the name of Mr. Kochukunju Pillai. Do you move it, Mr. Kochukunju Pillai?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): Yesterday, when Clause 23 was taken up for consideration, my amendment was postponed consideration until Clause 42 was disposed of. I submit that it may be considered before Clause 42 is taken up.

PRESIDENT: If you want to move the amendment to Clause 23 after Clause 42, you will have to wait until Clause 42 is disposed of.

***Clause 42.***

The following amendment to Clause 42 was not moved:

MR. M. R. MADHAVA VARIAR:

After Clause 42, add the following as Clause 43 and renumber the subsequent Clauses:

"43. *Nischayapatrams* which were executed twelve years before the commencement of this Regulation with the intention of a permanent settlement shall be considered as partition deeds.

*Illustrations.*

(1) In a tarwad consisting of three branches A, B and C, with 20, 15 and 10 male and female members, respectively, a *nischayapatram* was executed in 1086 whereby all the properties were allotted for enjoyment to each branch separately with the stipulation that each branch shall continue to enjoy the properties till the extinction of all the members of that branch and their lineal descendants and that no permanent alienations shall be made without the conjunction of all branches. Here, though there is the restriction on alienations, permanency of settlement was in contemplation. This *nischayapatram* shall be considered as a partition deed.

(2) In a tarwad consisting of two branches, A and B, branch A consisting of 2 males, and branch B consisting of 4 females and 2 males, a *nischayapatram* was executed in 1086, whereby some properties were given to branch A for life enjoyment alone with the stipulation that these properties should lapse to branch B after the death of the members of Branch A. Here, permanency of settlement was not in contemplation by the parties and hence this *nischayapatram* is not a partition deed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move the following amendment:—

Add, at the end, the following proviso:—"*Provided the gift or bequest is such as to enure to the benefit of the thavazhee as a whole.*"

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[Mr. K. Parameswaran Pillai.]

Clause 42 runs as follows :—

"Property acquired by gift or bequest from the father or husband before Regulation I of 1088 came into force shall, for the purpose of this Chapter, be treated as the tarwad property of the donees or devisees and of their thavazhee."

"Provided the gift or bequest is such as to enure to the benefit of the thavazhee as a whole,"—that is my amendment. It may be that a gift is made to a junior member, as I illustrated on a prior occasion, by the instance of a gift of a few jewels to a girl. To legislate that such a gift shall be treated as the tarwad property of the donee would be a violent enactment. Further, Sir, we have got the following difficulties also in the Section : "Property acquired by gift or bequest from the father or husband before Regulation I of 1088 came into force "—by whom is not mentioned—" shall, for the purpose of this chapter, be treated as the tarwad property of the donees,"—who the donees are is not mentioned. The donees may not be the entire group constituting the thavazhee or thavazhees. In such cases, to say that a gift made before Regulation I of 1088 came into force should be treated as tarwad property of all members and of their thavazhee is not correct.

Further, suppose a gift is made to a daughter by a father. According to this clause the gift would be not only for the benefit of the daughter but for the benefit of her whole *thavazhee*. So, if a gift is made by the father to one of his children, to say that the other children of the same donor would be entitled to the benefit of the gift is one difficulty. On a prior occasion, while discussing Clause 23, this House provided that a gift made to a particular child of a Nayar would be to the benefit of all the children. In the present instance, what is provided is that the donees and their thavazhee would be entitled to that property and the property would be treated as the tarwad property of the donee and her thavazhee as the case may be in the case of a female. That practically goes counter to Section 23 to some extent. In view of all these difficulties, I would submit, Sir, it is better that we make a proviso—

"*Provided the gift or bequest is such as to enure to the benefit of the thavazhee as a whole.*"

That should be the only presumption that could be drawn in such cases. That is what I am contending for.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*) : I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : Sir, I beg to oppose the amendment. In opposing Mr. Narayana Pillai's amendment to Section 23, I have already given the House my reasons for opposing this amendment. I think a little explanation is necessary to understand this amendment. This House is aware that in Section 23 we have enacted that all property acquired by gift or bequest from the father or husband subsequent to 1088 is to be treated as property inherited for the purposes of succession and devolution under Section 12 of this Regulation. Section 23 reads thus :—

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"(1) Property acquired by gift or bequest by the wife or widow or child or children from the husband or father as the case may be, after Regulation I of 1088 came into force shall, unless a contrary intention is expressed in the instrument of gift or bequest, if any, belong to the wife or widow and each of the children in equal shares.

(2) The rules for the devolution and distribution of the property of an intestate as hereinbefore provided shall, so far as they may be, apply to property mentioned in sub-section (1) as also to property acquired under Regulation I of 1081 and under Section 22 of this Regulation".

Now, there also Mr. P. K. Narayana Pillai wanted to introduce an amendment to the same effect. That amendment runs as follows :—

"*Property obtained by gift or bequest from the husband or father, as the case may be, by the wife, widow, child or children, as the case may be, or acquired out of property so given, bequeathed or inherited from the husband or father, as the case may be, after Regulation I of 1088 came into force, shall, subject to the provisions of Chapter IV, belong to the wife or widow and each of the children in equal shares if the gift or bequest is found to have been intended to benefit the wife or widow and children equally.*"

The present amendment is the same. In regard to properties acquired by gift or bequest after the year 1088, Section 42 will apply. In regard to cases of gift or bequest made prior to the year 1088, the property is to be regarded as property acquired by the donee to be dealt with under Section 12 for the purpose of devolution and distribution. As regards properties mentioned in Section 42, Chapter VII will apply as they are considered to be tarwad properties. Therefore, here also we see that the same amendment has been brought forward by my learned friend. The present amendment runs as follows :—

"*Add at the end the following proviso : 'Provided the gift or bequest is such as to enure to the benefit of the thavazhee as a whole.'*"

Here also he wants to start with the presumption that, in all cases of gifts or bequests, it is intended for the benefit of the donees alone. Now my objection to this amendment to Section 23 applies with greater force in regard to this amendment, because, in so far as bequests or gifts made prior to 1088 are concerned, the usual presumption was that the properties were acquired for the benefit of the donees and the decendants of the females, if any, among the donees. The intention lurking in the minds of these donors was that the property should be enjoyed in common by all the children and grand-children by the daughters, as in all cases of marumakkathayam property. Therefore we started with the presumption that all such properties were intended for the benefit of the donees and the members of the thavazhee. Now, my friend wants to alter the presumption altogether and to see that the presumption is that it is for their benefit alone unless it is shown in the instrument of gift that it



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[Rao Bahadur K. A. Krishna Aiyangar.]

was intended for the benefit of the whole of the thavazhee. I submit, there is absolutely no reason why a change should be made in the presumption in regard to these properties which have become vested, as I have already submitted, in sub-tarwads. There is no reason why we should divest vested interest. The amendment will have much more serious and far-reaching consequences than what is probably intended by the mover of the amendment. I therefore beg to oppose the amendment. It is quite unnecessary and it may lead to pernicious consequences.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : I also beg to oppose the amendment. The amendment is really not an amendment. It is a negation of the main clause itself. I believe there was a motion for the deletion of this clause and that motion was thrown out. The Section as it stands runs thus :—

"*Property acquired by gift, bequest or in any other manner from the father or husband before Regulation I of 1088 came into force, shall, for the purpose of this chapter, be treated as the tarwad property of the donees or devisees and of their thavazhee.*"

The Select Committee wanted to treat gifts made before 1088 and gifts made after 1088 from two different stand-points. In accordance with the law as it prevailed on the date of Regulation I of 1088, the Select Committee recommended that all property acquired before that date, whether from the husband or the father, should be treated as the sub-tarwad property of a certain group of beneficiaries whether in the name of the wife alone, or in the name of the children or other members of the family. The presumption then was that it was intended for the benefit of the wife and children alive on the date of the gift and even children unborn. That was the presumption on which the courts were working till Regulation I of 1088 was passed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Was it an invariable presumption ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : That was the presumption by which the courts were guided until a contrary intention on the part of the donor was definitely established.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Did that presumption hold good in the case of all properties ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : It applies in the case of makkathayam property.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : May I know if that would be the presumption in the case of an ornament presented by the father to one of his daughters ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : There is no use in going into details. At present, we have

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got a general proposition, *viz.*, where a gift was made by the husband or the father in favour of the wife or the children, it should be held that the object of the donor was to create a sub-tarwad which should enjoy the property comprised by the gift according to the ordinary incidence of marumakkathayam law. The property was considered to be impartible. That, Sir, was the conscience of the community as interpreted by courts of law.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Will Mr. Krishna Aiyangar cite any particular ruling in which, as regards a gift made to a junior member of a family, say, the youngest son, the same presumption was raised?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): This Council has accepted the soundness of that principle when it dealt with Section 23.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is not my question.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If my friend would draw my attention to any contrary ruling I am prepared to meet it. When the father makes a gift it might be that in a particular case he happened to draw it in the name of the younger son or the elder son or the wife. The real intention which was presumed in the first instance was that it was intended to benefit all his children, his wife and the descendants of his daughters as well, unless a contrary intention could be established in particular cases. My friend raised the question, 'supposing a man makes a gift of some ornaments to one of his daughters.' In that case several years might have lapsed after the gift was made. She might have been using it. It might have grown old; or she might have disposed it off. In these circumstances it may be presumed that it was the intention of the donor to give the benefit of the gift to the donee alone.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know what is the presumption under the existing clause?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Nothing in the nature of a conclusive presumption has been suggested by the legislature.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it not obligatory? Is it not stated there: 'It *shall* be presumed'?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If we are to gather anything from the general tendency of courts of law in inferring a presumption, I do not feel I am misstating it when I say that we start with the presumption that, if a gift is made by the father for the benefit of his children or wife, no one can claim exclusive proprietary interest in the subject of the gift unless it is proved that the donor intended it for the benefit of a particular individual. Now, Sir, when we make a presumption with reference to gifts made to a wife, or, as my friend suggested the other day, in favour

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of one's eldest child, if we are warranted in starting with the presumption that it was meant for the benefit of the sub-tarwad made up of his wife, her children and her descendants in the female line, there is nothing more violent in suggesting that as a general rule we should start with the presumption that it is for the benefit of the whole thavazhee. If, on the other hand, the circumstances of a particular case would not fit in, courts of law are at perfect liberty to hold that it was for the benefit of a particular individual exclusively. The father may make a very costly ornament. A particular child may be using it. She may take it with her when she goes to her husband's house. Still she may bring it back when she comes back to her father's house. Other children also may be using it occasionlly. If that is the conduct of the donee in dealing with a particular ornament the presumption may be considered to be established in such a case that it was meant for all and not for a single individual. On the other hand, as I already stated, in the case of the ornament which she has been allowed the exclusive use of and which she might have even converted into some other jewel or disposed of otherwise, there is the presumption that it was meant for a particular individual and not for the thavazhee or sub-tarwad. We are not to be guided solely by difficulties that might arise in particular cases. Viewing the question as a whole, there cannot be any doubt that the courts were working with the presumption that in such cases a sub-tarwad is being created for whose exclusive benefit the estate was to be managed by the senior member in the sub-tarwad with all the ordinary incidence of marumakkathayam law including the incidence of impartibility. When it came to the question of making definite arrangements for the devolution of such property our attention was drawn to the fact that the High Court has been construing Regulatiou I of 1088 not in any uniform manner. The question of partibility was poo-poohed in some cases. It was confirmed in other cases. In order to get rid of such ambiguity in the incidence of property which, till Regulation I of 1088 was passed, was regarded by a community as belonging to a sub-tarwad, the Select Committee said: "We would make a distinct provision with reference to the partibility and devolution of these gifts according as they were made before the passing of Regulation I of 1088 or subsequent to the passing of Regulation I of 1088." As remarked by Mr. Paramesvaran Pillai it forms the exclusive property of the sub-tarwad. A distinct proprietary right or vested interest was created in favour of all the members of such sub-tarwads. The mover of this amendment wants to disturb that position. It is therefore that I am just submitting that, apart from the difficulties of the working of the Regulation, apart from its violating our sense of natural justice, apart from the desirability of allowing the wife and children to divide the property instead of compelling them to transmit it to their descendants *ad infinitum* for enjoyment, we have to take note of the fact that, applying the ordinary incidence of marumakkathayam law to these gifts, we have to regard them

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as marumakkathayam sub-tarwads. In view of what the legislature is doing in giving the right of partition of tarwad property in general, it was thought that the right of partibility might be extended to these sub-tarwads as well, and Section 42 indicates that they shall be deemed to be the tarwad property of the donees or the property of their thavazhee.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): There is one difficulty. 'Property acquired by gift or bequest from the husband or father .....' may apply to property acquired by one of the junior members to whom the father might have gifted the property exclusively. Even if the gift might have been expressly intended to confer the exclusive title on the junior member, this Section will apply.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is only a question of fact in each particular case.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes. Suppose it is established that the gift was intended to confer exclusive title on a particular individual. Even in that case the statute will take away that right from him, treating the property as tarwad property.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): As for that matter we may put in a separate clause, as we have in Clause 23, that the Section would apply unless a contrary intention is expressed in the instrument of gift. I have no objection to a provision of that kind being enacted. That, I believe, would only amount to giving effect to the existing state of affairs. It would not affect vested rights at all. For, what was enjoyed by him as his exclusive property till 1088 would still continue to be his exclusive property even without any statutory provision for the same. There is no necessity for any such provision in regard to property acquired before 1088.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): When there is a distinct provision in this statute to the contrary that it shall be treated as tarwad property?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): This statute does not take away the right acquired under the general law of limitation. The Nayar Bill advances simply the general rights and liabilities of parties with reference to specific classes of property. This Regulation is not intended to take away special rights that may have been acquired by a particular individual under the law of prescription. In practice, therefore, such interests will not in any way be jeopardised. The Section deals with property acquired before the year 1088. We have now come to the year 1100. 12 clear years have already elapsed. If a man has practically exercised his right

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of ownership, whatever be the method of devolution of property prescribed by this Bill, his rights of enjoyment or rights of ownership will not in any way be affected. At any rate, the particular difficulty that my friend pointed out cannot be cured by the proviso that has been proposed for the consideration of the House. The proviso will practically nullify the course of conduct, observed by the community till the passing of Regulation I of 1088 and confirmed by the courts without practically any exception whatsoever.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am very glad that I am able to support the amendment. It has been said that there are various presumptions of law which would enable the court to hold that property acquired in the name of a junior member is either for the tarwad or for the junior member. So far as I am able to remember—and I may mention that no specific reference was made to any decided case—presumptions with regard to acquisitions exist only in the case of acquisitions in the name of the eldest child. When there are a number of children there must be some motive which induced the acquirer to purchase the property in the name of one of the junior members. The question of intention ordinarily manifests itself in the documents. But, there may be instances in which without mentioning any particular intention, the father pays the consideration and purchases the property in the name of one of the junior members, whether he may be a male or a female. Now, this Section, Sir, will have the object of frustrating that intention. For, it is a peremptory direction that the court shall treat such property as the tarwad property of the donees or devisees and of their thavazhees. So, if a father, for whatever reason, whether the daughter sings well or studies well, or whether she looked after him when he was laid up,—of course, all daughters may do so, but a particular daughter might have at that time had a husband, but with the permission of the husband come and lived with the father for a number of months,—was actuated by the best of impulses that, while loving all his children equally, he would give something to the daughter who showed so much self-sacrifice; or again if on the occasion of the marriage of the daughter, some *pantal-polikkal* is made—I am using an expression which is well known in Nayar society—why that should be treated as property which should enure to the benefit of the whole tarwad I am unable to understand.

RAO BAHADUR K. A. KRISHNA AIYANGAR ((*Nominated*) (*Deputy President*): As a piece of information may I know whether it goes generally to the girl that is married?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Yes.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): What I want to say is that this *pantal-polikkal* that my

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friend referred to does not come within the purview of this Section because it does not come from the father.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I know of several cases in which fathers have made special gifts to their married daughters, and if they are presented in the *pantal*, it need not be the *talikettu* ceremony but it may be in ordinary marriage (*Vivaham*).

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is it given at the time of *talikettu*?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): There is a confusion of ideas. The *pantal* present need not necessarily be made at the *talikettu* ceremony. *Talikettu* has gone out of use. It is very good that it is not in existence. There are marriages taking place; people celebrate them according to their station in life, and presents are made in the shape of ornaments, or valuable vessels, or it may be landed property.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): With reference to the sambandham ceremonies at present, are these presents made?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have witnessed instances—I do not want to mention the names of the gentlemen who celebrated the marriage—in which very valuable things were presented on the occasion of the marriage. If the present is worth five or six thousand rupees, and if the presumption is raised by this particular Section, that what was given to one girl and her children should go to her brothers and sisters and their children, then it is a proposition which is manifestly unfair to the interests of that girl.

Sir, we ought to respect intentions so far as we are able to ascertain them. We have been trying to go against the intention of persons who acquired properties some years ago with the object that only their daughters and daughters' children might get those properties. But on account of the rule of partition that we have adopted, it has been changed. By reading into the document some mysterious device, it may be said that he might have given that in order that it should go to the sub-tarwad. Sir, if the son or daughter, not being the eldest child, has got a vested right in the property, and if the property has been treated by him or her as his own or her own, that right is going to be invaded by this provision. It will have the effect of treating the women of the marumakkathayam tarwad worse than the women in the Mitakshara family, because in the Mitakshara family if a person has given property to a girl that property does not go to her sisters or brothers. Now, why deny this ordinary right to a person to take advantage of a gift made to her by her father? Why should she be compelled to divide the property with the other sons and daughters? My learned friend Mr. Krishna Aiyangar pointed out that there is the law of limitation. But among coparcenaries or

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co-owners, if any of them is in possession of any portion of the property, the rules of limitation will to a certain extent be changed, because the ordinary rules of adverse possession would not arise.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): On the finding that he is a coparcener of the property.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Why should we leave it to the tender mercy of courts of justice? If acquisitions are made in the name of a person for the obvious reason that the father intends the benefit to accrue to that person only, when people have been acting upon the usage, to shake that usage by the device of this Section and leave the question open to all these difficulties, is not a matter upon which this Council can congratulate itself. So that, Sir, when we recognise individual right even in tarwad property we should never take away the right that the father himself was anxious to create for the benefit of some child of his. No doubt, there are presumptions if the property stands in the name of the wife or the eldest son. But, in other cases the presumption is and ought to be the other way. This Section stigmatises the authority of the judges. It is said that the court "shall treat". The term used is not even "presume;" then there would have been some discretion in it. "Shall be treated"! You may bring any number of documents and file them. You may summon any number of respectable gentlemen and examine them to prove what the intention was, but all to no effect.

Therefore, Sir, I think there is great force in the amendment which has been moved by my learned friend Mr. P. K. Narayana Pillai.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Let us grant for a moment that there is some defect in the drafting of the clause. But the remedy proposed is worse than the disease, because while my friend Mr. P. K. Narayana Pillai wants that acquisitions in the name of the youngest child should not be treated as belonging to the joint family property or joint sub-tarwad property, he ignores the fact that, if this amendment were accepted, even if property is purchased in the name of the wife, even if it is purchased in the name of the eldest son, evidence will have to be let in to show that it was intended for the benefit of all. If he thinks that the Section is so wide as to exclude all possible presumptions even when there is strong evidence to the contrary, then the only way is not to go against the existing presumption, but to add a few words to the existing clause, namely, "property shall for purposes of this chapter and in the absence of evidence to the contrary be sub-tarwad property." I believe if that is put in there would be no objection. And I believe, if you substitute the words "and in the absence of evidence to the contrary" it will obviate the difficulty.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In which case we bring it into line with Clause 23.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Of course, in the case of Clause 23, I can understand the significance, because it was enacted by Regulation I of 1088 and it was intended for future gifts, and therefore unless a thing particularly satisfies the statutory requisites a man may not be able to avail himself of the advantage provided by this Section. But in the case of gifts before Regulation I of 1088, it may not be always that the gift was given by any registered deed. Therefore, there may be gifts, and there may not be registered deeds in writing, because there might have been gifts made in 1040, 1050 or 1080 when no gift was required to be in writing in order to be valid. But Regulation I of 1088 states that a gift made by any man should go to a particular line of inheritance. Therefore, I say the wording that should be added is "in the absence of evidence to the contrary."

PRESIDENT: After which words?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): "Shall for the purpose of this chapter."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I accept that amendment, Sir.

PRESIDENT: Do you withdraw your amendment then?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I accept the proposed amendment of Mr. Subba Aiyar and in the light of that I am prepared to withdraw my amendment and I move his amendment to add "and in the absence of evidence to the contrary" after the words "shall for the purpose of this chapter."

The motion was put to the vote of the House and carried.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move that the following new clause be added at the end of the chapter:—

*"If any property or right rendered divisible under this chapter is incapable of actual division or cannot be divided without seriously lessening its value or utility, the court shall have power to direct the sale or enjoyment in common or by turns of such property or right as the circumstances of the particular case would permit."*

We have now contemplated the case of division of tarwad properties, enjoyed by the members of a marumakkathayam tarwad, as also of makkathayam properties. All these properties we have now proposed to divide. But in certain circumstances it would be found difficult to divide the properties themselves. For example, I know that there are rights of *Ooranma* possessed by certain tarwads in certain temples. How is it possible to divide such rights?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is an impartible property.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Then there may be also difficulties in the case of four or five people having only one house and ten cents of ground on which the house stands. In their case, if the house is to be divided between them it would extremely lessen the utility of the house itself and nobody would be the better for it. In view



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of this difficulty, I have proposed this amendment which is practically based on the provision contained in the Partition Act in British India.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Is there no provision in the Civil Procedure Code?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Unfortunately there is nothing similar to what I have provided for in the light of the Partition Act. At present I am pressing this for the acceptance of the House.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : I have no objection to accept it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I believe, there is some difficulty in the matter. I believe that in the new Civil Procedure Code—I do not quite remember—we have made some provision. But, all the same, the difficulty pointed out by my friend is not peculiar to the Nayar families alone, but it is common among Hindu families governed by the Mitakshara law. In every property too, there is always that difficulty and the court takes advantage of its discretionary power, and in cases where the property if divided equally among the members entitled to a share in it, would not be to the advantage of anyone, the court sells the property and divides the proceeds among the claimants. I believe, when we take the Civil Procedure Code, we may make suitable provisions. So that, I do not think that it is a matter which should seriously be introduced into the Nayar Regulation. The courts, if they find it difficult to divide the property and apportion it to a particular sharer, now follows a certain course. Now we may leave it there, and my friends may note it down when the Civil Procedure Code comes up for discussion and may have it introduced in it.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*) : Anyhow, is it not the practice now adopted by the court?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Yes, we may provide for it in the Civil Procedure Code.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : But where is the objection to retaining it here?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Because all the necessary provisions on that subject may be provided for in their order under the Chapter on commission, and I believe that the proposed amendment is not quite exhaustive. Instead of providing piecemeal, it is a matter which should be regulated in regard to what the court should give effect to, and it has to be regulated in a law which applies to the procedure in courts rather than in a law which applies to a particular community. I think it would be more proper and effective to have it in the Civil Procedure Code than in this.

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MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether that matter may be considered before the Select Committee's Report comes to this Council?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If it is not published, I will see to it. It is not a point which will be ignored.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Would it not lead to a reconsideration like this before the Council?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In the Council we can move amendments and there is no difficulty, because I see that it is a matter not only affecting the Nayar community but one affecting also the Christian community, the Mahomedan community or any other community amongst whom there may be a suit for partition. Property will have to be apportioned among the various sharers, and what the court should do in such cases will be a matter which should be provided for in the Civil Procedure Code as it is likely to affect all communities.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): As the reasonableness of the amendment has been admitted, I would only submit that it may be voted upon now.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If it is going to be pressed I wish to have my say on the amendment.

PRESIDENT: You are not in order, as Mr. Narayana Pillai has replied.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I was not given an opportunity to speak. I leave it to you, Sir, to say whether I can speak on the merits of the amendment in view of the fact that there are important considerations.

PRESIDENT: I am afraid you are not in order.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I would in the first place draw my friend's attention to Section 381 of the Civil Procedure Code which runs as follows:

"If it appears to the Court that the property, by reason of its nature or of the number of the parties interested therein, or in any other circumstance, cannot conveniently be divided, the Court may, if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent of any others of them, pass a decree for the sale of the property and for the distribution of the proceeds among the parties according to their respective rights in the property."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, that is true. But it relates to the sale of property only.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As the question of partition is not confined to one community alone, I think that the provision in the Civil Procedure Code may be modified to cover all cases.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): This is a provision that I have taken from certain reported decisions as well. Even though Mr. Subba Aiyar objects to it I press it to the vote.

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[President.]

The amendment was put to the vote and carried.

The following amendment was not moved :—

MR. G. PARAMESVARAN PILLAI:

Delete the Clause and substitute the following :

"41. (a) Property obtained by a Nayar male under the provisions of this Regulation relating to partition of tarwad property shall not be alienated by him except with the consent of his wife and children, if any.

(b) Property obtained by a Nayar female under the provisions of this Regulation relating to partition of tarwad property shall not be alienated by her except with the consent of her children, if any."

PRESIDENT: I do not think there is any other amendment relating to this clause. If there is any other amendment pending, it may be brought to my notice.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There was one amendment of mine pending. In view of the fact that my friend draws my attention to gifts of *makkathayam* properties before 1088, in the Section that we have been just discussing, I do not wish to press the motion.

The following motion was not moved :—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Add the following at the end of the Clause :—

"The provisions of this Section as to alienability and liability to be seized in execution shall also apply to property obtained from the husband or the father by the wife or the children, as the case may be, which, but for this Regulation, would form the tarwad property of the *thavazhee* so obtaining such property."

PRESIDENT: I now take it that the House accepts that Clauses 34 to 42 with amendments and additions do form part of the Bill.

Clauses 34 to 42 with amendments and additions were added to the Bill.

***Clause 43.***

PRESIDENT: I find four identical amendments with regard to Clause 43. Mr. Raja Raja Varma will move his amendment first.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Will you kindly permit me to move for adjourning the further consideration of the Bill till to-morrow? There are some questions which we have already been discussing. If you could let us have an hour's discussion informally so that we may submit our agreed amendment to-morrow morning, it will enable us to finish the Bill before we rise to-morrow.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I suggest that we may rise after considering Clause 43 also?

PRESIDENT: In regard to any amendment which any member of the House may wish to move in consequence of any deliberation which may take place hereafter, I think, notice of it should be given to

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Government so that they may consider and decide what position they should assume in regard to those amendments.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is therefore that I suggest that, if you will permit us to rise now, we may be able to settle and submit the agreed amendment for the consideration of Government before this evening.

MR. A. HOOGEWERF (*Nominated*): Does it mean that the resolutions will not be discussed?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If we are agreed, the amendment will not take more than an hour.

PRESIDENT: I do not think it is possible to prolong this Council beyond to-morrow. We have already been sitting for nearly ten days. If the House wants this adjournment, I have no objection to give. May I take it that the House wants to adjourn just now?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In deference to some of my friends' wishes, I request that we may finish Clause 43 also before we adjourn. That can be finished very soon.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We cannot prevent other members from speaking. I myself have to oppose the amendment.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Sir, I beg to move that Clause 43 be deleted.

In support of my motion, I have to lay before the Council one specific instance, namely, the case of a tarwad consisting of one karanavan and several minor motherless children. In the nature of the clause as it stands now, the karanavan is alone a major member who can give an application for having a tarwad registered as impartible. But the minors, when they become majors, even though they are very large in number—they cannot apply to get their property partitioned. So, what I submit is that the power of redemption should be granted to all others. So, I move that at least some consideration for withdrawal may be given or the whole Section may be deleted.

PRESIDENT: Withdrawal for whom?

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): To all the members to get out of the clutches of the Section as the karanavan is not likely to join them even though all of them wish to do so.

So what I say is that either the whole clause should be deleted or some modification so as to apply to the major members should be made.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Sir, I second it. The existence of a Section like this practically nullifies the effect of the Regulation. In a Nayar tarwad one member alone is sufficient to bring about such a result. For example, if there are twelve members and if by some means they are now pursuaded to join and put in a petition to Government, the notification will be published. But, afterwards, if eleven of them petition the Government, this notification

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[President.]

cannot be cancelled. That means that the present generation can bind even the future generation. The Section as it stands is absolutely indefencible and unreasonable.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I oppose the amendment for this reason. There are in Travancore some aristocratic families which have in their possession Devaswom properties; they have got *kalaries* and all manner of things and they have brought to my notice that they should remain undivided as long as possible.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Is it only to comprise the major members?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Yes, some of them have actually expressed their wish to me and I think there is no harm in making a provision like this, because we provide that the request must be made by all the adult members of the tarwad, and therefore if all of them desire to be exempted from this provision, why should we prevent them? Even though we do not make such a provision, they can remain undivided. So there is no harm in a provision of this kind. But I am willing to make a slight amendment to this Section if he will be satisfied. In the case of revocation we may say that "the majority of the adult members" may apply.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Why not put it in the first portion also?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): This is for rescinding.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): May I know whether any time-limit has been fixed for rescinding?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): At any time.

PRESIDENT: I think it is not clear.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have no objection to accept the amendment if it is worded "may at any time on an application made by the major adult members of the tarwad."

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): I accept that amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I have no objection to accept it.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): For my part I object to it.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): I have also no objection to accept the amendment.

PRESIDENT: As it is, Mr. Raja Raja Varma's amendment is to delete the whole clause.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): As it now stands, I oppose the amendment of Mr. L. R. Raja Raja Varma.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I also oppose the amendment for the deletion of the clause for this reason.

PRESIDENT: Are you going to accept the amendment suggested by Mr. Subba Aiyar? If so, you will have to withdraw your amendment.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Then I do not withdraw my amendment.

The amendment was put to the vote and lost.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I suppose the amendment introduced by Mr. Paramesvaran Pillai may be accepted.

PRESIDENT: Yes; it may be done if the House accepts it. Will you please say what your amendment is?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I move that between the words "notification and rescind" the following words may be added:—

"*May at any time on an application by the majority of the major members of the tarwad.*"

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I second it.

PRESIDENT: I take it that the House accepts the amendment.

The amendment was carried.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Now I request the President that the Deputy President's request may be complied with.

PRESIDENT: Now we adjourn and meet again at 11-30 A. M. to-morrow.

The Council adjourned at 4-22 P. M.

S. PARAMESVARA AIYAR,
*Secretary to the Legislative Council.*

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